

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 155

STATE OF MISSOURI ON THE RELATION OF JESSE W.
BARRETT, ATTORNEY GENERAL; PUBLIC SERVICE
COMMISSION OF MISSOURI, AND KANSAS CITY GAS
COMPANY, APPELLANTS,

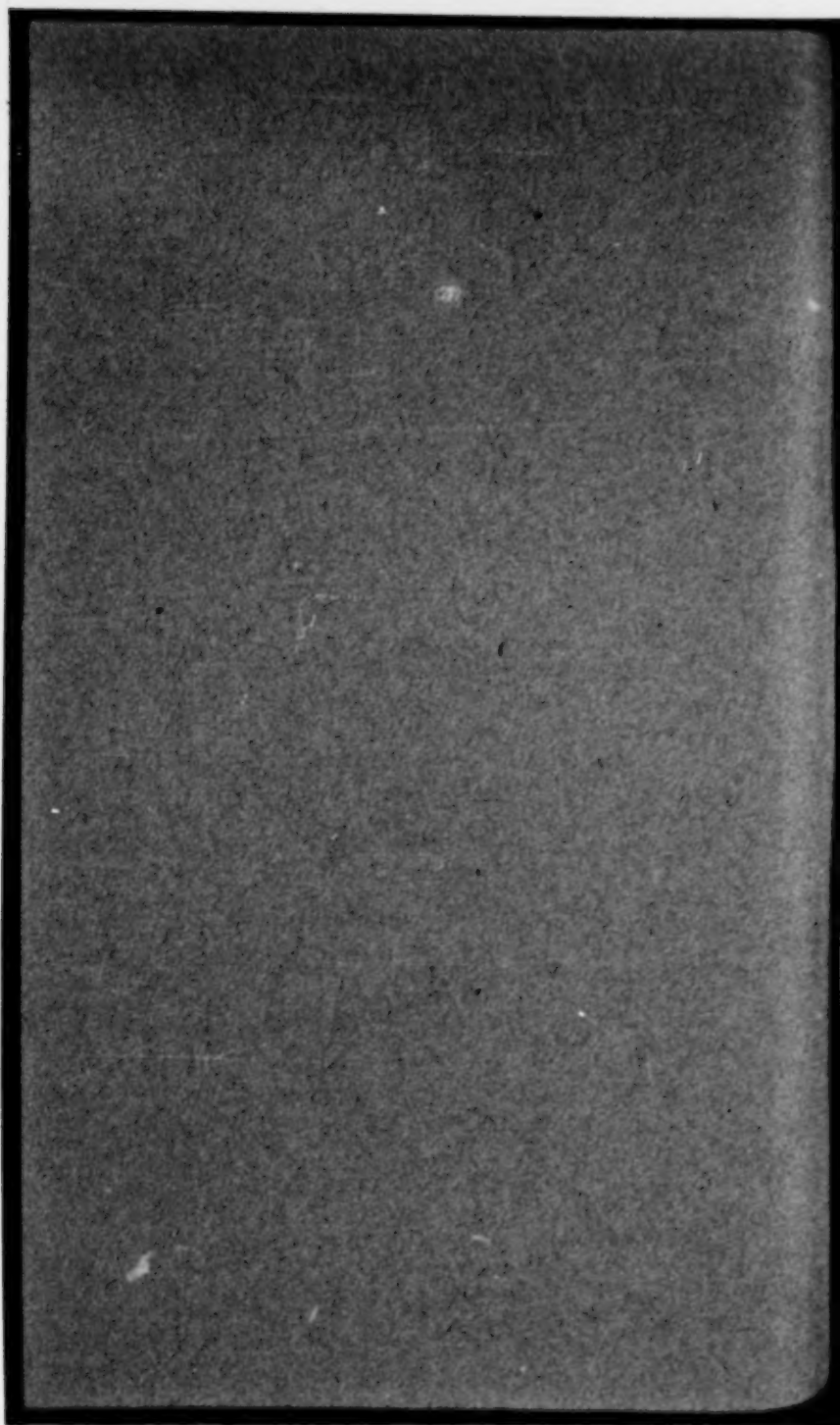
vs.

KANSAS NATURAL GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 29, 1923.

(29,258)



(29,253)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 703.

STATE OF MISSOURI ON THE RELATION OF JESSE W.
BARRETT, ATTORNEY GENERAL; PUBLIC SERVICE
COMMISSION OF MISSOURI, AND KANSAS CITY GAS
COMPANY, APPELLANTS,

vs.

KANSAS NATURAL GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI.

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a In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri and Kansas City Gas Company, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

To Kansas Natural Gas Company, Greetings:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 20th day of October, 1922, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein State of Missouri on the relation of Jesse W. Barrett, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, and Kansas City Gas Company are appellants, and Kansas Natural Gas Company is respondent, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 20th day of September, the year of our Lord one thousand nine hundred and twenty-two.

ARBA S. VAN VALKENBURGH,

District Judge.

Service of above Citation on Appeal acknowledged this 20th day of September A. D. 1922.

THE KANSAS NATURAL GAS COMPANY,
By RICHARD J. HIGGINS,
Its Attorney.

b [Endorsed:] In Equity. No. 361. In the District Court of the United States for the Western Division of the Western District of Missouri. State of Missouri et al., Complainants, vs. Kansas Natural Gas Company, a corporation, Defendant. Citation

on Appeal. Filed Sept. 20, 1922. Edwin R. Durham, Clerk, by H. C. Spaulding, Deputy.

1 UNITED STATES OF AMERICA, *et al.*:

Be it remembered that heretofore, to-wit, at the regular April Term of the United States District Court for the Western Division of the Western District of Missouri, and on the 29th day of April, 1922, a Bill of Complaint was filed wherein State of Missouri on the relation of Jesse W. Barrett, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, are Complainants, and Kansas Natural Gas Company is Defendant.

Said Bill of Complaint (omitting the Exhibits) is in words and figures as follows, to-wit:

2 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Bill of Complaint.

To the Honorable the Justices of the District Court of the United States for the Western Division of the Western District of Missouri:

The complainants for their cause of action against the defendant herein state the following facts, to-wit:

1. That Jesse W. Barrett is the duly elected, qualified and acting Attorney General of the State of Missouri, and a citizen and resident of said State.

2. That complainant, the Public Service Commission of Missouri, is a body politic, duly organized and existing under and by virtue of the laws of the State of Missouri and clothed with the power and impressed with the duty of regulating and controlling all public service corporations doing business in said State, and is authorized by statute to sue and be sued in its own name, and is located, established and maintained at Jefferson City in the State of Missouri and is composed of John A. Kurtz, Edwin J. Bean,

3 Noah W. Simpson, Hugh McIndoe and A. J. O'Reilly, who are the duly appointed, qualified and acting commissioners constituting said Public Service Commission, and are citi-

zens and residents of Jefferson City in said State. Complainant, the Public Service Commission, by its order heretofore duly made and entered, directed its counsel to institute and maintain this action for the purposes herein set forth.

3. That the Kansas Natural Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is a citizen and resident of said State and is doing business in the State of Missouri and the Western Division of the Western District of said State.

4. That the jurisdiction of this court in this case rests upon the diverse citizenship of parties plaintiff and defendant and the constitutional and federal question as to whether or not the defendant is, by virtue of being engaged in interstate commerce, exempt and free from all regulation and control by the State of Missouri and the Public Service Commission of said State in the matter of furnishing, delivering and selling natural gas within the State of Missouri.

5. That the matter in controversy herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars (\$3,000.00) and this suit is of a civil nature in equity to enjoin the defendant herein from discontinuing the service and supply of natural gas to local distributing companies and through said local distributing companies to the citizens, inhabitants and the public at Kansas City, Missouri, Joplin, Missouri, Nevada, Missouri, Carl Junction, Missouri, and Oronogo, Missouri, and other communities within the State of Missouri, without the order and approval of the Public Service Commission of said State, and

4 to enjoin said defendant from changing and increasing its rates and charges without filing the same with the Public Service Commission of the State of Missouri in the manner provided by law, under a claim of right so to do under the Interstate Commerce clause of the Federal Constitution.

6. Complainants further state and show to the court that the defendant Kansas Natural Gas Company owns, leases, maintains and operates a natural gas plant and pipe line system extending from the Mid-Continent Gas Fields in Southern Kansas and Oklahoma into and through the State of Kansas and into the State of Missouri and certain municipalities thereof; and furnishes, delivers and sells natural gas within the State of Missouri to the Kansas City Gas Company at Kansas City, Missouri, the Joplin Gas Company at Joplin, Missouri, the Fort Scott and Nevada Light, Heat, Water and Power Company, at Nevada, Missouri, the Carl Junction Gas Company at Carl Junction, Missouri, the Oronogo Gas Company at Oronogo, Missouri, and other local distributing companies in other communities within said State; that said Kansas Natural Gas Company maintains a physical connection within the State of Missouri between its said plant and system and the distribution plants and systems of said local distributing companies; that said

local distributing companies own, operate, control and manage local gas plants and systems and operate the same for public use under privileges, licenses and franchises granted by the State of Missouri and by the political subdivisions and municipalities thereof in which they are doing business; that some time prior to 1906 said local distributing companies acquired, accepted and received
5 said privileges, licenses and franchises from the State of Missouri and its political subdivisions and municipalities and undertook and entered upon the business of furnishing to the inhabitants of said cities said natural gas relying upon certain contracts in writing under which said Kansas Natural Gas Company and its predecessors in title and property undertook, contracted and agreed to furnish, deliver and sell to said local distributing companies and aid local distributing companies contracted and agreed to purchase, take and receive all their needed supply of such natural gas pursuant to said licenses and franchises for the purpose of performing and discharging their public business of furnishing natural gas service to the citizens and inhabitants of said cities and the public sojourning therein; that thereupon and thereafter said Kansas Natural Gas Company and its predecessors in title and property commenced to furnish said gas to said local distributing companies and have ever since continued so to do; and that said Kansas Natural Gas Company has a complete physical monopoly of the supply of natural gas to said local distributing companies and said cities and their inhabitants within the State of Missouri; and that said Kansas Natural Gas Company is a gas corporation within the meaning of the Public Service Commission Act of the State of Missouri and owns, operates, controls and manages its said gas plant within the State of Missouri and within said cities of Kansas City Joplin, and other communities in the State of Missouri for public use under privileges, licenses and franchises granted by the State of Missouri and the political subdivisions and municipalities thereof.

6 That on September 27, 1906, the Mayor and Council of Kansas City, Missouri, passed and approved and the grantees accepted Ordinance No. 33887 granting to the predecessors in right, title and property of the Kansas City Gas Company the privilege, license and franchise to furnish natural gas to said city and its inhabitants; that section 20 of said ordinance specifically recited that the grantees covenanted that their contract for a supply of natural gas was with the Kaw Gas Company and the Kansas City Pipe Line Company, predecessors in right, title and property to the defendant Kansas Natural Gas Company; and that said grantees would procure from said corporations and file with the City Clerk within 90 days from the passage of said ordinance a written agreement in form to be approved by the City Counselor agreeing, among other things, that said two corporations, their successors and assigns the defendant herein, would continue to furnish natural gas to said city during the period of said grant and until September 27, 1936; that thereafter said written agreement was so procured from said corporations, prede-

cessors of the defendant herein, and approved by the City Counselor and so filed with the City Clerk of Kansas City, Mo.

7. That thereafter and on Nov. 17 and December 3, 1906, said predecessors in right, title and property of said Kansas Natural Gas Company and said predecessors in right, title and property of the Kansas City Gas Company, grantees of said franchise, entered into certain contracts in writing, similar in form, in which they recited the granting of said franchise by said City of Kansas City, Missouri, and under which said Kansas Natural Gas Company undertook and agreed to furnish natural gas to said Kansas City Gas Company and its predecessors for the period of said franchise; that said ordinance so granting said privileges, licenses, and franchise was attached to and made a part of said contract to furnish said supply of gas and said contract to furnish said supply of gas was referred to and agreed upon in said franchise so granting said right so to do and that said contract to furnish said supply of gas and said grant of privilege, license and franchise so to do were interdependent and mutual obligations; that pursuant to said grant of privilege, license and franchise so to do and said contract and undertaking so to do said Kansas Natural Gas Company and its predecessors did thereafter duly construct and extend their aforesaid gas plant and pipe-line system into and upon the public ways of Kansas City, Missouri, and commenced and have continued at all times thereafter to furnish, deliver and sell to the Kansas City Gas Company within the State of Missouri and within the corporate limits of Kansas City, Missouri, natural gas for public use, and that by reason thereof said Kansas Natural Gas Company is a gas corporation within the meaning of the Public Service Commission Act of the State of Missouri. True and correct copies of said franchise and agreement are hereto attached, marked Exhibits A and B, and made a part hereof. Complainants further state that substantially similar franchise-rights were granted, contracts made and conditions established and maintained by said Kansas Natural Gas Company and other local distributing companies in the cities of Joplin, Oronogo, Nevada, Carl Junction and other communities in the State of Missouri; that by reason of the foregoing facts, complainants aver that the business carried on within the State of Missouri by said Kansas Natural Gas Company consisting of furnishing, delivering and selling natural gas within the State of Missouri at Kansas City, Missouri, Joplin, Missouri, Oronogo, Missouri, Carl Junction, Missouri, and Nevada, Missouri, to local distributing gas corporations and under privileges, licenses and franchises granted or permitted by the State and its municipalities, is local in its nature and pertains to the furnishing of natural gas to local consumers within said cities and in the State of Missouri.

8. That on the 14th day of June, 1920, the Public Service Commission of Missouri, after hearing and consideration of evidence duly offered, fixed the price and rate for said gas furnished by the Kansas Natural Gas Company to the Kansas City Gas Company within the City of Kansas City and State of Missouri at

35 cents per thousand cubic feet and authorized the Kansas City Gas Company to pay such price therefor during such period of time as the selling rates then authorized by said Commission should remain in force and effect.

9. That on numerous and other proceedings and hearings before the Public Service Commission of Missouri, said Commission fixed the price for said gas so furnished by said Kansas Natural Gas Company to local distributing companies at Joplin, Nevada, Oronogo, and other communities within the State of Missouri at 28 cents per thousand cubic feet, and said Kansas Natural Gas Company has been and is now so furnishing, delivering and selling said gas to said local distributing companies within the State of Missouri at such rates so fixed by this Commission.

10. That on or about the 1st day of April, 1922, said Kansas Natural Gas Company notified the Kansas City Gas Company so obtaining its supply of gas from said Kansas Natural Gas Company that on and after April, 1922 meter-readings it would charge said company at the rate of 40 cents per thousand cubic feet for all gas furnished and delivered. A true and correct copy of said notice is hereto attached, marked Exhibit C and made a part hereof. And that on and prior to April 1, 1922, said defendant notified said other local distributing companies at Joplin, Nevada, Oronogo and Carl Junction, Missouri, in like manner that said rate would be increased from 28 cents to 35 cents per thousand cubic feet.

11. That thereupon and thereafter the Kansas City Gas Company notified said Kansas Natural Gas Company that it would accept and receive gas delivered by said defendant within the State of Missouri into the system of said local company on and after April 1922 meter-readings only upon the express understanding that said local company would pay therefor at the rate of 35 cents per thousand cubic feet until otherwise ordered and authorized by the Public Service Commission of the State of Missouri. A true and correct copy of said notice is hereto attached, marked Exhibit D, and made a part hereof.

12. That thereupon and thereafter said Kansas Natural Gas Company notified said Kansas City Gas Company that unless it agreed to accept and pay for said gas at the rate of 40 cents per thousand cubic feet on and after the 1st day of May, 1922, said defendant Kansas Natural Gas Company would discontinue the service and supply of said natural gas. A true and correct copy of said notice is hereto attached, marked Exhibit E, and made a part hereof. And complainants are informed and believe that said Kansas Natural Gas Company has issued substantially the same notices and threats, either in writing or verbally, of discontinuance of the supply of said natural gas to said local distributing companies at Joplin, Oronogo, Carl Junction and Nevada, Missouri.

10 13. That complainants are informed and believe that said Kansas Natural Gas Company will discontinue the supply of

natural gas to said local distributing companies and the citizens and inhabitants of said cities unless enjoined and restrained from so doing by the order of this Honorable Court.

14. That the defendant has not filed with the Commission in the manner provided by Sections 10477, 10478 and 10479, R. S. Mo. 1919, any new schedule of rates or any new rate or charge or any new form of contract or agreement or any new practice relating to rates, charges or service; and that no application has been made to the Commission by said defendant or other party for an order changing the rate and price heretofore authorized and allowed for said gas, and no hearing has been had and no order made allowing the aforesaid increases.

15. Complainants further state that they have not been informed and are not advised as to the reasonableness or necessity of the claim and demand of said Kansas Natural Gas Company for said increases.

16. Complainants further state and show to the court that the business carried on by the defendant of transporting natural gas from Oklahoma and Kansas into the State of Missouri is interstate commerce of a local nature; that Congress has never assumed jurisdiction over such business and that the same is subject to local regulation by the State of Missouri through its Public Service Commission.

11 17. Complainants further state and show to the Court that the daily continuous and uninterrupted furnishing, delivery and sale of said natural gas within the State of Missouri by the Kansas Natural Gas Company to the Kansas City Gas Company and other local distributing companies are local transactions within the State of Missouri and pertain to the furnishing of natural gas to local consumers within said State and municipalities thereof, and subject to the jurisdiction of the Missouri Public Service Commission.

18. Complainants further state and show to the Court that the pipe lines of the defendant Kansas Natural Gas Company are physically and permanently connected within the State of Missouri to the main system of the Kansas City Gas Company and other local public service gas corporations within said State and the transmission of gas from said pipe lines into said distribution systems is local in its nature and pertains to the furnishing of natural gas to local consumers within the State of Missouri and said cities; and is subject to the jurisdiction of the Public Service Commission of said State.

19. Complainants further aver that the defendant is conducting a business affected with the public interest; that it enjoys a complete monopoly in the furnishing of natural gas to the aforesaid cities in the State of Missouri; that its service extends to large populations and that it may not discontinue said service to any consumer, party or the public by reason of the non-payment of a controverted bill.

12 20. Complainants further state that populations of approximately one-half million people are served with natural gas by said defendant within the State of Missouri; that if said gas is shut off and the service discontinued as threatened by said defendant in the notice hereto attached, it will result in great and irreparable damage, loss, cost and expense to the people using said gas and great injury, and inconvenience to the public; that the complainants have no plain and adequate remedy at law and therefore bring this suit in this court of equity where alone full and adequate relief may be had.

Wherefore, the premises considered, complainants pray this Honorable Court:

1. That a writ of subpoena issue out of this Honorable Court directed to the Kansas Natural Gas Company as defendant herein commanding it to appear in this court on a day certain and answer the allegations of the complainants' bill of complaint and show cause, if any there be, why complainants should not have the relief herein prayed.

2. That upon final hearing this Honorable Court issue a decree herein enjoining the defendant Kansas Natural Gas Company, its officers, agents and employees from shutting off or discontinuing the service and supply of natural gas to any consumer or local distributing gas corporation obtaining gas from said defendant within the State of Missouri for the non-payment of any rate, price, charge or bill not filed, established and authorized in the manner provided by the Public Service Commission Act of the State of Missouri.

13 3. That pending the final hearing of this cause, this Honorable Court grant and issue a temporary restraining order and interlocutory injunction herein restraining the defendant, its officers, agents and employees from shutting off or discontinuing the service and supply of natural gas to any consumer or local distributing gas corporation obtaining gas from said defendant within the State of Missouri for the non-payment of any rate, price, charge or bill not filed, established and authorized in the manner provided by the Public Service Commission Act of the State of Missouri.

4. And for such other and further relief in the premises as to this Honorable Court may seem equitable and just, and for costs.

JESSE W. BARRETT,
Attorney General;

R. PERRY SPENCER,
General Counsel;

JAMES D. LINDSAY,
*Assistant Counsel to Complainant
Public Service Commission,
Solicitors for Commission.*

J. W. DANA,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

James D. Lindsay, being first duly sworn, deposes and says that he is one of the solicitors for the complainants in the above entitled cause; that he has read and knows the contents of the foregoing bill of complaint, and that the statements, allegations and averments therein made and contained are true, except such as are made on information and belief and as to such affiant believes them to be true. And further affiant saith not.

JAMES D. LINDSAY.

Subscribed in my presence and sworn to before me this 28th day of April, 1922.

[SEAL.]

E. A. TERPENING,
Notary Public.

14 EXHIBITS TO BILL OF COMPLAINT.

Exhibit A, being Ordinance No. 33887 of Kansas City, Mo., is the same ordinance attached to the Agreement between The Kansas City Pipe Line Co. and McGowan, Small and Morgan and is set out in paragraph II of the statement of the evidence, and is omitted here.

Exhibit B, being Agreement between The Kansas City Pipe Line Co. and McGowan, Small and Morgan, dated Dec. 3, 1906, is the same Agreement set out in paragraph II of the statement of the evidence, and is omitted here.

Exhibit C, being notice dated Apr. 1, 1922, from the Kansas Natural Gas Company of increase to 40 cents, is the same notice set out in paragraph XVII of the statement of the evidence, and is omitted here.

Exhibit D, being answer of the Kansas City Gas Company, dated Apr. 20, 1922, to the above notice, is the same letter set out in paragraph XVII of the statement of the evidence, and is omitted here.

Exhibit E, being notice dated Apr. 25, 1922, from the Kansas Natural Gas Company that they will discontinue service unless paid 40 cents, is the same notice set out in paragraph XVII of the statement of the evidence, and is omitted here.

15 And afterwards, to wit, on the 4th day of May, 1922, Answer of Defendant to the Bill of Complaint was filed.
Said Answer is in words and figures as follows, to-wit:

16 In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 361. Equity.

STATE OF MISSOURI, on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and The Public Service Commission of the State of Missouri, Complainants,

VS.

KANSAS NATURAL GAS COMPANY, Defendant.

Answer.

Comes now the said defendant, Kansas Natural Gas Company, and for its answer to plaintiffs' Bill of Complaint, filed herein, says:

1. It admits the allegations of Paragraph 1 of Plaintiffs' Bill of Complaint.

2. It admits the allegations of Paragraph 2 of Plaintiffs' Bill of Complaint.

3. It admits that it is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, and is a citizen and resident of said state, and denies that it is doing business in the State of Missouri, the Western Division of the Western District of said state.

4. It admits the allegations of fact contained in the Fourth Paragraph of plaintiffs' said Bill of Complaint.

5. Defendant admits the allegations of fact contained in the Fifth Paragraph of Plaintiffs' Bill of Complaint.

6. It admits that it owns leases, maintains and operates a natural gas plant and pipeline system extending from the Midcontinent gas field in Southern Kansas, and Oklahoma, through the State of Kansas, and into the State of Missouri and certain municipalities thereof; it denies that it sells and delivers natural gas within the State of Missouri to the Kansas City Gas Company or any of the other companies mentioned in Paragraph 6 of Plaintiffs' Bill of Complaint, and states the fact to be that it sells and transports gas from Oklahoma in interstate commerce, and delivers the same to said respective companies in the States of Missouri and Kansas; it admits that said Kansas Natural Gas Company maintains a physical connection within the State of Missouri, between its plant and system and the distribution plants and systems of said local distributing companies; and admits that said local distributing companies own, operate, control and manage local gas plants and systems, and operate the same for public use under privileges, licenses and franchises granted by the State of Missouri and by the

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public subdivisions and municipalities thereof under which they are doing business: it alleges that it has no knowledge as to whether or not said local distributing companies acquired said franchises, etc. in the year 1906, as alleged in Paragraph 6 of said Bill of Complaint; and denies that said companies undertook and entered upon the conduct of their business, relying upon any contracts in writing or otherwise with this defendant; and denies that at this time any contracts are in existence between this defendant and any of said distributing companies; it admits that for a number of years it has been furnishing gas to said local distributing companies; admits that it has a monopoly on the supply of natural gas to said companies, and denies that it is a gas corporation, within the meaning of the Public Service Commission Act of the State of Missouri; admits that it owns, operates and controls pipelines extending into the State of Missouri, and into the several communities mentioned in Paragraph 6 of said Bill of Complaint, but denies that it transacts any business in relation thereto within the State of Missouri, other than the delivery of gas transported in interstate commerce to said several distributing companies; and denies that it carries on any of its operations under any privilege, license or franchise granted by the State of Missouri or any political subdivision or municipality thereof. This defendant does not know and cannot say whether the Mayor and Council of Kansas City, Missouri, passed and approved Ordinance No. 33887, and does not know the provisions of the said ordinance, therefore denies the same, and asks that plaintiffs be put on their proof thereof.

71. Defendant admits that on November 17, and December 3, 1906, its predecessors in right, title and property, and the predecessor in right, title and property of the Kansas City Gas Company, entered into certain contracts in writing, and admits that Exhibit "A" attached to Plaintiffs' Bill of Complaint is a true and correct copy thereof, but alleges that said contract recites, among other things:

"Whereas, the party of the first part (being the Kansas City Pipe-line Co.) is the owner of gas lands and leases in the gas belt of Kansas, and a pipeline for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri,"

that said gas field has long since been exhausted, and that the said contract was, on the 24th day of December, 1920, by the United States District Court for the District of Kansas, declared to be no longer of any binding force or effect upon this defendant, the Kansas Natural Gas Company; and admits that it extended its pipelines to and upon the public ways of Kansas City, Missouri, and has commenced, and has continued at all times thereafter to furnish, deliver and sell to the Kansas City Gas Company gas, but alleges that such gas was transported and sold only in interstate commerce; and denies that by reason thereof the said Kansas Natural Gas Com-

pany is a gas corporation within the meaning of the Public Service Act within the State of Missouri. Defendant admits that similar contracts were made and conditions established and maintained by the said Kansas Natural Gas Company and other local distributing companies in the cities of Joplin, Oronogo, Nevada, Carl Junction and other communities in the State of Missouri, but denies that by reason of such facts that this defendant is, or has at any time carried on within the state of Missouri the business of furnishing, delivering and selling gas except in interstate commerce. Defendant does not know, and cannot say whether or not the local distributing companies operating in Joplin, Missouri, Oronogo, Missouri, Carl Junction Missouri and Nevada, Missouri, have licenses and franchises granted, or whether they or any of them are permitted by the said state and its municipalities to supply gas to said cities and towns or the inhabitants thereof, and asks that plaintiffs be put on their proof thereof.

8. Defendant denies the allegations of Paragraph 8 in Plaintiffs' Bill of Complaint.

9. Defendant denies the allegations of Paragraph 9 of Plaintiffs' Bill of Complaint.

10. Defendant admits that on or about the 1st day of April, 1922, it, the said Kansas Natural Gas Company, notified the Kansas City Gas Company that on and after the April meter readings it would charge said company at the rate of forty cents per thousand cubic feet for all gas furnished and delivered and that Exhibit "C" is a true copy of said notice, but denies that on or about April 1, 1922, it notified the other local distributing companies at Joplin, Nevada, Oronogo and Carl Junction, Missouri, that the said rate would be increased from twenty-eight cents to thirty-five cents per thousand cubic feet, but alleges the fact to be that on or about April 1, 1922, this defendant notified the distributing companies at Joplin, Oronogo and Carl Junction, Missouri, that it would charge each of said distributing companies at the rate of forty cents per thousand cubic feet for all gas furnished and delivered on and after the April, 1922 meter readings.

11. Defendant admits the allegations of Paragraph 11 of Plaintiffs' Bill of Complaint.

12. Defendant admits the allegations contained in Paragraph 12' of Plaintiffs' Bill of Complaint.

13. Defendant admits the allegations contained in the 13th Paragraph of Plaintiffs' Bill of Complaint.

14. Defendant admits the allegations contained in Paragraph 14 of Plaintiffs' Bill of Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of Plaintiffs' Bill of Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of Plaintiffs' Bill of Complaint.

17. Defendant denies the allegations contained in Paragraph 17 of Plaintiffs' Bill of Complaint.

18. Defendant admits that the pipelines of the Kansas Natural Gas Company are physically and permanently connected within the State of Missouri to the main system of the Kansas City Gas Company, and other local public service gas corporations within said state, but denies each and all of the other allegations contained in the 18th Paragraph of Plaintiffs' Bill of Complaint.

19. Defendant denies the allegations of Paragraph 19 of Plaintiffs' Bill of Complaint.

20. Defendant does not know, and cannot say whether the allegations of fact of Paragraph 20 of Plaintiffs' Bill of Complaint are true, and therefore denies the same, and asks that Plaintiffs be put on their proof thereof.

21. That the defendant, having traversed, denied or pleaded to each of the allegations of Plaintiffs' Bill of Complaint, further answering says: that it maintains and operates a pipeline extending from the State of Oklahoma, through the State of Kansas, and into the State of Missouri, and is engaged in transporting gas in commerce among the states of Oklahoma, Kansas and Missouri by purchasing gas produced in the states of Oklahoma and Kansas and transporting and selling the same in the states of Kansas and Missouri. That said Kansas Natural Gas Company does not have a franchise from any city or town in the State of Missouri, and does not operate any distributing companies or sell gas to distributing companies at the respective city gates for an agreed price, and does not maintain any office or agency in the State of Missouri for the transaction of its business.

22. Said Kansas Natural Gas Company further alleges that its business as above set out constitutes commerce among the states of a national character which is not subject to regulation by the Public Service Commissions of the State of Missouri, and that it has the legal right to charge the several distributing companies to whom it delivers gas in said state such reasonable and just rates for gas delivered as it may desire without the consent of the Public Service Commission of the State of Missouri, and without making application to said Commission for authority so to do.

23. Said Kansas Natural Gas Company further alleges that the rate of forty cents per thousand cubic feet for gas delivered to the city gates of the several distributing companies set out in Plaintiffs' Petition is a just and reasonable rate, and is necessary to be charged by said Kansas Natural Gas Company in order to secure to it a reasonable return on the value of its property used and useful in connection with the service rendered, and that a less rate would be unremunerative, noncompensatory and confiscatory.

Wherefore, Defendant prays that by decree of this court it be declared to be engaged in commerce among the states of a national character, and not subject to regulations of the Public Service Commission of the State of Missouri; that the relief asked by Plaintiffs be denied; that the orders heretofore issued herein be set aside and Defendant have judgment for its costs and for such other and further relief as to this Honorable Court may seem just and right.

KANSAS NATURAL GAS COMPANY,
By ROBT. D. GARVER,
H. O. CASTER,
Its Attorneys.

STATE OF OKLAHOMA,
Washington County, ss;

H. O. Caster, of lawful age, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled cause; that he has read and knows the contents of the foregoing answer, and that the statements and allegations herein contained are each and all true.

Further affiant saith not.

H. O. CASTER.

Subscribed and sworn to before me this 3rd day of May A. D. 1922.

[SEAL.]

MARTHA J. WILLIAMS,
Notary Public.

Commission expires March 15, 1923.

23 And afterwards, to-wit, on the 25th day of May, 1922,
Reply of Complainant to the Answer of Defendant was filed.
Said Reply is in words and figures as follows:

24 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Reply.

Now come the complainants and in reply to the 21st paragraph of the defendant's answer filed herein admit that said defendant

maintains and operates a pipe line extending from the State of Oklahoma through the State of Kansas and into the State of Missouri and is engaged in transporting gas in commerce among the States of Oklahoma, Kansas and Missouri by purchasing gas produced in States of Oklahoma and Kansas and transporting and selling the same in the States of Kansas and Missouri; deny that said Kansas Natural Gas Company does not have a franchise from any city or town in the State of Missouri but avers that said allegations are irrelevant and immaterial and allege that said company occupies the public streets and highways of said State and its municipalities and deny that said company does not operate any distributing companies or sell gas to distributing companies at the respective city gates for an agreed price; complainants have no knowledge as to whether or not said defendant maintains an office or agency in the State of Missouri for the transaction of business and therefore puts defendant to its proof.

25 In reply to the 22nd paragraph of defendant's answer, complainants deny that the business or commerce carried on by the defendant is of a national character and aver that it is subject to regulation by the State of Missouri and the Public Service Commission thereof; deny that the defendant has the legal right to charge the several distributing companies to whom it delivers gas in said State any rate it may desire without the consent of the Public Service Commission of the State of Missouri and without filing its rates and charges with said commission in the manner provided by the Public Service Commission Act of said State.

Complainants state that the allegations of paragraph 23 of said answer are immaterial and irrelevant and state no facts constituting any defense to the complainants' bill of complaint.

Wherefore, complainants ask judgment as prayed in their bill of complaint.

JESSE W. BARRETT,
Atty. General;

R. PERRY SPENCER,
General Counsel;

JAMES D. LINDSAY,

*Assistant Counsel to the Public Service Commission,
Attorneys for Complainants.*

J. W. DANA,
Of Counsel.

26 And afterwards, to-wit, on the 25th day of May, 1922, Application of the Kansas City Gas Company to be made a party complainant and to file its intervening petition was filed.

Said Application is in words and figures as follows, to-wit:

- 27 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Motion of the Kansas City Gas Company.

Now comes the Kansas City Gas Company and moves the court for leave to be made party complainant herein and to file the intervening petition hereto attached and made a part hereof.

J. W. DANA,

Attorney for Kansas City Gas Company.

- 28 And afterwards, to-wit, on the 25th day of May, 1922, an Order making the Kansas City Gas Company a party complainant and granting leave for it to file its intervening petition herein was filed and entered of record in words and figures as follows, to-wit:

- 29 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Order.

Now on this 23rd day of May, 1922, this cause came on to be heard on the application of the Kansas City Gas Company to be made a party complainant and to file an intervening petition and was argued by counsel, thereupon,

It is ordered that the Kansas City Gas Company be and the same is hereby made party complainant and granted leave to file an intervening petition herein forthwith and not to delay trial.

JOHN C. POLLOCK,
Judge.

30 And afterwards, to-wit, on the 25th day of May, 1922, the Intervening Petition of the Kansas City Gas Company was filed.

Said Intervening Petition (omitting the exhibits) is in words and figures as follows, to-wit:

31 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

VS.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Intervening Bill of Complaint of the Kansas City Gas Company.

To the Honorable the Justices of the District Court of the United States for the Western Division of the Western District of Missouri:

Now comes the Kansas City Gas Company, hereinafter the Company, and with leave of court files this its intervening bill of complaint herein and represents and states the following facts to-wit:

1. That it hereby adopts the statements, allegations and averments of the complainants' bill of complaint, together with the exhibits thereto attached and makes the same a part hereof as fully as if written at full length herein, and joins with the complainants in their prayer for the relief demanded, as will hereinafter more fully appear.

2. That this Company is a corporation duly organized and existing under and by virtue of the laws of the state of Missouri and engaged in the business of furnishing, distributing and selling natural gas to the city of Kansas City, Missouri, and the inhabitants thereof, as alleged in the complainants' petition.

32 3. That this Company has an interest in the subject of the action set forth in the complainants' bill of complaint and the relief demanded and that the judgment and decree of this court

herein cannot issue in favor of either the complainants or defendant without materially affecting or prejudicing the rights and interests of this Company, as will hereinafter more fully appear.

4. This Company further states and shows to the court that the defendant owns, leases, maintains and operates a natural gas plant and pipeline system extending from the Oklahoma and Kansas gas fields into and through the state of Kansas and into the state of Missouri and furnishes, delivers and sells natural gas within the state of Missouri to this Company and numerous other companies doing business in various cities, towns and communities in said state; that said defendant maintains permanent physical connections within the state of Missouri between its said plant and system and the plant and system of this Company and other local distributing companies; that said defendant occupies the public highways of the state of Missouri and its municipalities with its said pipelines and is vested with and exercises the power of eminent domain for the purpose of acquiring rights of way for the laying and maintenance of its said pipelines and system; that this Company owns, maintains and operates a gas plant and system in Kansas City, Missouri, and furnishes natural gas under Ordinance No. 33887 of Kansas City, Missouri, duly granting authority so to do to this Company and its predecessors in right, title and property; that on and prior to November, 1906, this Company manufactured, furnished and sold manufactured gas to said city and its inhabitants and that on or about said date this Company discontinued the furnishing of manufactured gas and undertook and entered upon the business of furnishing natural gas to said city and its inhabitants relying upon certain contracts in writing dated Nov. 17 and December 3, 1906, under which said Kansas Natural Gas Company and its predecessors in title and property undertook, contracted and agreed to furnish, deliver and sell to this Company and its predecessors, and this Company and its predecessors contracted and agreed to purchase, take and receive natural gas from said Kansas Natural Gas Company and its predecessors pursuant to said ordinance for the purpose of performing and discharging their public business of furnishing natural gas service to said city and its inhabitants; that thereupon and thereafter said Kansas Natural Gas Company and its predecessors in title and property commenced to furnish said natural gas to this Company and said defendant and its receivers have ever since continued so to do; and that said defendant has a complete physical monopoly of the supply of natural gas to this Company and the city and people served by it; true and correct copies of said Ordinance No. 33887 of Kansas City, Missouri, and said gas-supply-contract dated December 3, 1906, are attached to the complainants' bill of complaint, hereby referred to and made a part hereof.

5. That on and prior to January 20, 1920, the defendant and its receiver by authority of court demanded of this Company 35 cents per thousand cubic feet for gas furnished by said defendant to this Company, delivered at Kansas City, Missouri, that thereupon this Company, relying upon said offer of said defendant to furnish said

gas at 35 cents per thousand feet, applied to the Public Service Commission of Missouri for authority to pay said 35 cents city gates rate and to charge its customers 80 cents per thousand feet with a 50-cent per month service-charge, which said rate was necessary in order to pay said 35 cent city gates rate; and that thereupon

34 and thereafter the Commission, relying upon said demand and offer of said defendant entered an order fixing said 35 cent city gates rate to said Kansas Natural Gas Company and said 80 cent rate and 50-cent service-charge; a true and correct copy of said order being hereto attached, marked Exhibit A, and made part hereof.

6. That on April 1, 1922, said defendant notified this Company that on and after April 1922 meter-readings it would charge this Company at the rate of 40 cents per thousand cubic feet for all gas furnished; a true and correct copy of said notice being attached to the complainants' bill of complaint, hereby referred to and made a part hereof.

7. That thereupon this Company notified said defendant that it would accept and receive gas delivered by said defendant into the main system of this Company on and after April, 1922, meter-readings only upon the express understanding that this Company would pay therefor at the rate of 35 cents per thousand cubic feet until otherwise ordered and authorized by the Public Service Commission of Missouri; a true and correct copy of said notice being attached to the complainants' bill of complaint, hereby referred to and made a part hereof.

8. That thereupon said defendant notified this Company that unless it agreed to accept and pay for said gas at the rate of 40 cents per thousand cubic feet on and after May 1, 1922, said defendant would discontinue the service and supply of said natural gas; a true and correct copy being attached to the complainants' bill of complaint, hereby referred to and made a part hereof.

35 9. This Company further states and shows to the court that it is not now earning a fair return upon its property used and useful in the service of the public and that it is unable to and therefore has not paid or agreed to pay and refuses to pay or agree to pay said defendant said increase from 35 cents to 40 cents per thousand feet until authorized so to do by the Public Service Commission and further authorized to increase its selling rates to its consumers from 80 cents to 85 cents per thousand feet with a 50-cent per month service-charge to enable it to pay said increase in the city gates rate; this Company is informed and believes that if a decree of injunction issues herein said defendant will appeal to the Supreme Court of the United States from said decision by this court, and that if a decree of injunction is denied herein the complainants will appeal to the Supreme Court of the United States for the purpose of determining the jurisdiction of the Commission over the defendant; and this Company states that the prosecution and determination of said appeal will

take at least two years' time; and this Company is informed and believes that if the jurisdiction of said Commission is not sustained then and in that event said defendant will assert a claim and demand against this Company for five cents per thousand cubic feet balance on account for all gas furnished from April 25, 1922, until the final determination of said matter; and that said claim will amount to approximately \$500,000.00.

36 10. This Company further states and shows to the court that it is entitled to a full and fair return upon its property used and useful in the service of the public pending the process of rate-making and pending the final adjudication and determination of the jurisdiction of said Commission over said Kansas Natural Gas Company; that if said jurisdiction is not sustained and said Kansas Natural Gas Company collects said five cents increase from this Company pending said litigation, its present rates are and will be unreasonably low, non-compensatory and confiscatory of the property of this Company used and useful in the service of the public during all of said time in violation of the due process clause of the Federal Constitution.

11. That by reason of the foregoing facts this Company has filed with the plaintiff Public Service Commission of Missouri a new schedule and application for authority to increase its selling rate for gas from 80 cents to 85 cents per thousand cubic feet pending the final determination of the jurisdiction of said Commission and offers to collect said five cents per thousand cubic feet and to hold the same in a reserve fund and to account for and return the same to each and every consumer in the amounts paid by the said consumer if and when it shall be finally determined that the demands of said Kansas Natural Gas Company upon this Company for said increase from 35 cents to 40 cents per thousand cubic feet were and are wrongful, unlawful and non-enforceable against this Company.

12. That if this court denies the decree prayed by complainants herein, then complainants will appeal to the Supreme Court of the United States to determine the jurisdiction of said Commission, and pending such appeal said defendant will discontinue the supply of natural gas or this Company will be forced to pay said additional five cents per thousand feet; and its present rates fixed

37 by said Commission during said appeal would be confiscatory.

That the claim of right of defendant herein to determine for itself the rate it shall charge for natural gas furnished to this Company and complainants' denial of that claim, involve the construction and application of Sec. 8 of Art. 10 of the Constitution of the United States providing that Congress shall have power to regulate commerce among the several states; and the claim of this Company for compensatory rates pending the adjudication of said matter and the further process of rate-making by said Commission involves the construction and application of Sec. 1, Art. 14 of the Amendments to said Constitution providing that no state shall deprive any person of property without due process of law.

13. That this Company here now in open court offers, if allowed and permitted so to do, to charge and collect said five cents per thousand feet and to hold the same in a special fund and account, and upon the final determination of the jurisdiction of said Commission and the rights of the parties to refund the same to the consumers or to pay said amount over to the defendant herein, as ordered and directed by this Honorable Court or the Public Service Commission of the State of Missouri.

14. This Company further avers that great and irreparable loss, damage, cost and expense will be sustained by this Company and its customers if the defendant herein carries out its threat to discontinue the supply of gas to this Company and its customers; and great and irreparable damage, loss, cost and expense will or may be sustained by this Company either if the decree prayed herein is granted or denied and this Company has no plain, adequate or proper remedy at law; wherefore this intervening bill of complaint is filed in this cause before this Honorable Court where alone full and adequate relief can be had.

38 Wherefore, the premises considered, this Company prays this Honorable Court that the decree of injunction prayed in the complainants' bill of complaint be granted, but upon the condition that the Public Service Commission of the state of Missouri forthwith authorize this Company to increase its selling rates to its consumers from 80 cents to 85 cents per thousand feet and to hold said increase in a reserve account and fund and to return the same to the consumers paying said increase if and when it shall be finally determined that the demand of said defendant Kansas Natural Gas Company upon the Kansas City Gas Company for said increase in the city gates rate from 35 cents to 40 cents per thousand cubic feet was wrongful, unlawful and non-enforceable against the Kansas City Gas Company.

J. W. DANA,
Attorney for the Kansas City Gas Co.

STATE OF MISSOURI,
County of Jackson, ss:

C. W. Green, being first duly sworn, deposes and says that he is the Vice President and General Manager of the Kansas City Gas Company; that he has read and knows the contents of the foregoing intervening bill of complaint, and that the statements, allegations and averments therein made and contained are true, except such as are made on information and belief and as to them affiant believes them to be true. And further affiant saith not.

C. W. GREEN.

Subscribed in my presence and sworn to before me this 20th day of May, 1922.

[SEAL]

E. A. TERPENING,
Notary Public.

My commission expires Oct. 23, 1922.

21

39 EXHIBIT TO INTERVENING BILL OF COMPLAINT.

Exhibit A, being order of Pub. Serv. Com. of Missouri, is the same order set out in paragraph XI of the statement of the evidence, and is omitted here.

40 And afterwards, to-wit, on the 2nd day of June, 1922, the Answer of the Defendant to the Intervening Petition of the Kansas City Gas Company was filed.

Said Answer is in words and figures as follows, to-wit:

41 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of Jesse W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Answer of Defendant to Bill of Kansas City Gas Co.

Filed June 2, 1922.

Kansas Natural Gas Company, (defendant) for answer to the intervening bill of complaint of Kansas City Gas Company, filed herein on May 25th, 1922, respectfully states:

1. Defendant adopts its answer to the complainant's bill of complaint, together with all exhibits thereto attached, and makes the same a part hereof, as fully as though the same were repeated at length herein.

2. Defendant admits that the Kansas City Gas Company is a corporation duly organized and existing under and by virtue of the laws of Missouri, and that said Kansas City Gas Company is engaged in the business of furnishing and distributing natural gas to the City of Kansas City, Missouri, and the inhabitants thereof.

42 3. Defendant admits that Kansas City Gas Company has an interest in the subject of the action set forth in complainant's bill of complaint, but defendant is not informed as to whether the relief demanded and any judgment or decree that may be entered therein, will materially affect or prejudice the rights and interests of Kansas City Gas Company.

4. Defendant admits that it owns, leases, maintains and operates a pipe line system and plant for the transportation and sale of natural gas; said pipe line and system extends from Oklahoma in and through the State of Kansas and into the State of Missouri. Defendant transports all of its gas which is sold in the States of Kansas and Missouri in inter-state commerce, and all of the gas sold by the defendant to the Kansas City Gas Company is gas that has been transported in and is a part of inter-state commerce. Defendant is engaged in like interstate commerce in the transportation and sale of gas to all other companies doing business in various cities, towns and communities, both in the States of Missouri and Kansas. Defendant admits that it maintains permanent physical connections within the State of Missouri, between its plant and system and the plant and system of the Kansas City Gas Company. Defendant admits that in places its lines occupy public highways of the State of Missouri. Defendant is without knowledge as to whether it is vested with the power of eminent domain under the laws of the State of Missouri, and whether it is or is not vested with the power of eminent domain, is a question of law. Defendant denies that it has ever exercised the power of eminent domain for any purpose in the State of Missouri. Defendant admits that Kansas City Gas Company operates a gas plant and system in Kansas City, Missouri, and that it furnishes natural gas to the City of Kansas City, Missouri, and the inhabitants thereof. Defendant is without

43 knowledge as to the basic power or authority of Kansas City Gas Company to operate said gas plant, or as to whether said Kansas City Gas Company is operating under the provisions of Ordinance #33887 of Kansas City, Missouri. Defendant is without knowledge as to the Kansas City Gas Company prior to November, 1916, manufacturing, furnishing and selling manufactured gas to said City and its inhabitants; or as to any discontinuance thereof on or about said day. Defendant is without knowledge as to whether Kansas City Gas Company discontinued the sale of Natural gas because of any reliance upon any contracts dated November 17 and December 3, 1906. Copies of said contracts are attached to the bill of complaint, and speak for themselves as to their terms and conditions. Defendant admits that after December 3, 1906, it commenced to transport, sell and deliver to the Kansas City Gas Company, natural gas. Defendant denies that it has a complete physical monopoly of the supply of natural gas to the Kansas City Gas Company.

5. Defendant admits that on January 20, 1920, Receivers of its property under and by virtue of an order of court, demanded of the Kansas City Gas Company 35 cents per thousand cubic feet, for all gas delivered by defendant to Kansas City Gas Company. Defendant denies that it or its Receivers offered to furnish to Kansas City Gas Company, gas at 35 cents per thousand cubic feet. The application of the Kansas City Gas Company to the Public Service Commission of Missouri, speaks for itself as to its terms and its prayer. Therefore, defendant denies that said application of the

Kansas City Gas Company to the Public Service Commission of Missouri, was for authority to pay 35 cents city gate rate to defendant, and to charge its customers with 80 cents per thousand cubic feet, with a 50 cents per month service charge. Defendant denies
44 that the Commission in entering any order, relied upon any offer of defendant or its Receivers that defendant or its Receivers would furnish gas at the rate of 35 cents per thousand cubic feet. Defendant admits that the Public Service Commission of Missouri, made and entered an order upon said application, a copy of which is attached to the intervening petition, marked Exhibit "A".

6. Defendant admits that on April 1st, 1922, it notified Kansas City Gas Company, in writing, as to the price that would be charged by defendant for natural gas after the April meter readings. A copy of said notice is attached to complainant's bill of complaint.

7. Defendant admits that after service by it of the notice referred to in paragraph numbered Six hereof, the Kansas City Gas Company sent to defendant a notice, a copy of which is attached to the bill of complaint.

8. Defendant admits that after its receipt of the notice of the Kansas City Gas Company referred to in paragraph numbered Seven hereof, it sent to the Kansas City Gas Company a notice with reference to the discontinuance of service and supply, a copy of which notice is attached to the bill of complaint.

9. Defendant is without knowledge as to whether the Kansas City Gas Company is now earning a fair return upon its property used and useful in the service of the public, or as to whether said Kansas City Gas Company is unable to, and for such reason has refused to pay or agree to pay defendant for gas at the rate provided in said notice of April 1st, 1922, until authorized to do so by the Public Service Commission, and until it is further authorized to increase its selling rates to its consumers from 80 cents to 85 cents per thousand cubic feet with a 50 cents per month service charge.

45 Defendant's intention is that if a decree of injunction issue herein, to appeal from said decision to whatever appellate court has jurisdiction to hear and determine such appeal. Defendant is not informed as to what the plan, purpose or intention of the complainant may be in event that an injunction herein is denied. Defendant is not informed as to the time that will elapse during the prosecution and determination of any such appeal. Defendant now claims, and will forever claim, that on and since April 25, 1922, until the price is further changed, that the Kansas City Gas Company shall pay for all natural gas furnished to it at Kansas City by defendant at the rate of 40 cents per thousand cubic feet on the terms stated in its notice of April 1st, 1922.

10. Defendant denies that the Public Service Commission has any jurisdiction, power or authority to fix, prescribe or limit the rates to be charged by the defendant to the Kansas City Gas Com-

pany. Defendant is without knowledge as to whether if it collects the rates prescribed in its notice of April 1st, 1922, such collection will result in losses to the Kansas City Gas Company, or will render the present rates charged by the Kansas City Gas Company unreasonably low, non-compensatory or confiscatory of the property of the Kansas City Gas Company, used or useful in the service of the public.

11. Defendant is without knowledge as to the reasons why said Kansas City Gas Company has filed with the complainant, Public Service Commission of Missouri, a new schedule or application for authority to increase its selling rates for gas from 80 cents to 85 cents per thousand cubic feet, if any such schedule has been filed. It is without knowledge as to any change in the schedule proposed by the Kansas City Gas Company.

46 12. Defendant is without knowledge as to whether complainant will appeal to the Supreme Court of the United States or to any other court of appellate jurisdiction to determine the jurisdiction of the Public Service Commission in the event that this Court denies the decree prayed for by the complainant herein. Defendant admits that in the event of such a decree being entered, it will discontinue the supply of natural gas unless said Kansas City Gas Company will pay the rates provided for in its notice of April 1, 1922. Defendant is without knowledge as to whether in that event the rates being collected by the Kansas City Gas Company will be confiscatory.

Wherefore, the defendant prays that the intervening bill of the Kansas City Gas Company be dismissed, and that the defendant may have such other and further orders as may be proper in equity in the premises.

(Signed)

ROBT. D. GARVER,
R. J. HIGGINS,
H. O. CASTER,

Attorneys for Kansas Natural Gas Company.

47 And afterwards, to-wit, on the 27th day of June, 1922, Final Decree was filed and entered of record in words and figures as follows, to-wit:

48 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, Complainants; Kansas City Gas Company, Complainant and Intervenor,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Final Decree.

Filed June 27, 1922.

This cause, having come on to be finally heard on the 26th day of June, 1922, upon the pleadings and proofs, the complainants appearing by Mr. J. D. Lindsay, their attorney; the Kansas City Gas Company, intervenor, appearing by Mr. J. W. Dena, its attorney, and the defendant, the Kansas Natural Gas Company appearing by H. O. Caster, R. D. Garver and R. J. Higgins, its attorneys; and the Court having taken said cause under advisement and having duly considered the pleadings and proofs and the arguments of counsel, doth now, upon this 27th day of June, 1922:

1. Order, adjudge and decree that the said bill of complaint and intervening bill of complaint of the Kansas City Gas Company herein be, and the same hereby are dismissed, and the restraining order heretofore issued be and the same is set aside, with costs to complainants and intervenor, the Kansas City Gas Company.

49 2. It appearing from the record that the increase in the city gates rate for gas from 35 cents to 40 cents per thousand cubic feet charged by the Kansas Natural Gas Company to the Kansas City Gas Company will result in a material increase in the operating costs of said Kansas City Gas Company and may require a change in the rates charged by said Company to its consumers; and it further appearing that said Kansas City Gas Company has filed with the Public Service Commission of Missouri a new schedule of rates and an application for authority to increase its selling rate for gas from 80 cents to 85 cents per thousand cubic feet if, when and as said Kansas Natural Gas Company shall increase its rates to said Kansas City Gas Company to 40 cents per thousand feet for gas: Wherefore, it is ordered that said Kansas City Gas Company be and it is hereby authorized to increase its selling rate for gas furnished to its consumers from 80 cents to 85

cents per thousand cubic feet effective on bills rendered from and after the date hereof; and said Company is hereby ordered to deposit said increase monthly with the Clerk of this Court as Auditor, hereby appointed to hold the same, and said Company shall keep an account of all amounts charged in excess of the existing schedule of rates authorized by the Public Service Commission of Missouri, together with the names of the persons, corporations and firms so charged, and shall, if and when ordered by the Court so to do, file with the Court a statement of the aggregate amount of such excess charge together with the list of parties charged as aforesaid; and shall file bond in the sum of \$20,000.00 conditioned that it will observe this order. If at any time the amount thus sequestered becomes oppressively large, the Company may apply to the Court, upon due notice to the Commission, for permission to withdraw from the Clerk, so appointed as Auditor to hold the same, any part of the amount thus sequestered; and if the Court shall be

49a of the opinion that said application should be granted, in whole or in part, it may order the same, in whole or in part, released to the Company upon the giving of a good and sufficient bond for the return to the Clerk of the amount so released if and when the Court shall order such return to be made. The sums so deposited shall be held subject to the disposition of the Court upon any final order or decree in accordance with the determination of the rights of all parties interested.

3. And the Public Service Commission of Missouri is hereby temporarily restrained from interfering with said Kansas City Gas Company putting into force and effect and collecting said 85 cents per thousand cubic feet for gas furnished pending the hearing and determination by said Commission of the application of said Company for an increase in its selling rates, and until the further order of this Court, and the court hereby retains jurisdiction of the Kansas City Gas Company and the Public Service Commission of Missouri for the purposes herein set forth.

ARBA S. VAN VALKENBURGH,

Judge.

50 And afterwards, to-wit, on the 20th day of September, 1922, Petition for Appeal, Assignment of Errors, Notice of presentation of Petition for Appeal and Order Allowing Appeal were filed.

Said Petition for Appeal, Assignment of Errors, Notice and Order Allowing Appeal are in words and figures as follows:

51 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commis-
sion of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

*Petition of the State of Missouri and the Public Service Commission
of Missouri and the Kansas City Gas Company for an Appeal.*

Filed 9-20-22.

The above named State of Missouri, Public Service Commission
of Missouri and Kansas City Gas Company conceiving themselves
aggrieved by the final judgment and decree entered herein on this
27th day of June, 1922, in the above entitled proceeding, do hereby
appeal from said judgment and decree to the Supreme Court of the
United States; and they pray that this appeal may be allowed and
that the transcript of the record and proceedings and papers upon
which said judgment and decree was made, duly authenticated, may
be sent to the Supreme Court of the United States.

JESSE W. BARRETT,
Attorney General of Missouri;

L. H. BREUER,

R. PERRY SPENCER,

JAMES D. LINDSAY,

Solicitors for Public Service

Commission of Missouri.

J. W. DANA,

Solicitor for Kansas City Gas Company.

Copy of above petition received this 19th day of September, 1922.

THE KANSAS NATURAL GAS CO.,

By H. O. CASTER,

R. D. GARVER,

R. J. HIGGINS,

Its Attorneys.

Kansas City, Mo.

52 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri and Kansas City Gas Company, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Assignment of Errors on Appeal.

Filed 9-20-22.

Now come the Complainants and assign the following errors in the above entitled cause, to-wit:

Assignment No. 1. That the court erred in holding that the furnishing, delivery and sale of natural gas locally at Kansas City, Missouri, either within or without the State of Missouri by the Kansas Natural Gas Company to the Kansas City Gas Company is interstate commerce, national in character and free from regulation by the State of Missouri through its Public Service Commission.

Assignment No. 2. That the court erred in denying the injunction prayed in the bill of complaint and intervening bill of complaint.

53 Assignment No. 3. That the court erred in dismissing the bill of complaint and intervening bill of complaint.

JESSE W. BARRETT,
Attorney General of Missouri;

R. PERRY SPENCER,

JAMES D. LINDSAY,

Solicitor for Public Service

Commission of Missouri.

J. W. DANA,

Solicitor for Kansas City Gas Company.

Copy of above Received 19- day of September, 1922.

THE KANSAS NATURAL GAS CO.,
By H. O. CASTER,
R. D. GARVER,
R. J. HIGGINS,

Its Attorneys.

Kansas City, Mo.

54 In the District Court of the United States for the Western
District of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commis-
sion of the State of Missouri and Kansas City Gas Company, Com-
plainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Notice.

Filed 9-20-22.

To the Kansas Natural Gas Company and its Attorneys of Record:

You and each of you will please take notice that the State of Mis-
souri, the Public Service Commission of the State of Missouri, and the
Kansas City Gas Company will call up for hearing and order their
petition for the allowance of an appeal from the final order, judg-
ment and decree in the above entitled case to the Supreme Court of
the United States on September 20, 1922, at ten o'clock A. M., or as
soon thereafter as counsel can be heard, in the courtroom of the
United States District Court for the Western District of Missouri, at
St. Joseph, Missouri.

(Signed)

JESSE W. BARRETT,
Attorney-General of Missouri;

(Signed)

L. H. BREUER,

(Signed)

JAMES D. LINDSAY,

*Solicitor for Public Service
Commission of Missouri.*

(Signed)

J. W. DANA,
Solicitor for Kansas City Gas Company.

Above notice received.

THE KANSAS NATURAL GAS COMPANY,
By H. O. CASTER,
R. D. GARVER,
R. J. HIGGINS,
Its Attorneys.

Kansas City, Mo., September 19, 1922.

55 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commis-
sion of the State of Missouri and Kansas City Gas Company Com-
plainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Order Allowing Appeal.

Filed 9-20-22.

This cause came on to be further heard on this 20th day of Sep-
tember, 1922, upon notice, and upon the petition of the complain-
ants for an appeal, and was argued by counsel, and it is ordered

That the appeal of the State of Missouri, Public Service Commis-
sion of Missouri and the Kansas City Gas Company from the final
judgment and decree entered herein on the 27th day of June, 1922,
be and the same is hereby allowed; that their bond on appeal be and
is hereby fixed in the sum of \$500.00, to be approved by the Clerk.

ARBA S. VAN VALKENBURGH,
District Judge.

September 20, 1922.

56 And afterwards, to-wit, on the 23rd day of September,
1922, Appeal Bond was filed and approved.

Said Appeal Bond is in words and figures as follows, to-wit:

57 In the District Court of the United States For the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri and Kansas City Gas Company, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Appeal Bond.

Filed 9-23-22.

Bond of State of Missouri, Public Service Commission of the State of Missouri, and Kansas City Gas Company.

Know all men by these presents: That State of Missouri Public Service Commission of the State of Missouri, and Kansas City Gas Company and the American Surety Company of New York are held and firmly bound unto Kansas Natural Gas Company in the full and just sum of Five Hundred Dollars (\$500.00) to be paid to said Kansas Natural Gas Company, its successors and assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents. Sealed with our seals and dated this 20 day of September, 1922.

Whereas, lately and on the 27th day of June, 1922, in the District Court of the United States for the Western Division of the Western District of Missouri, in a suit pending in said court between State of Missouri on the relation of Jesse W. Barrett, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, complainants, and Kansas City Gas Company intervenor and complainant, vs. Kansas Natural Gas Company, a corporation, defendant, judgment was rendered against the complainants, and the complainants State of Missouri, Public Service Commission of the State of Missouri and Kansas City Gas Company have obtained an order of said court allowing an appeal from the decision of said court to reverse the judgment in the aforesaid suit, and a citation directed to said Kansas Natural Gas Company citing and admonishing them to be and appear in the Supreme Court of the United States at the City of Washington thirty days from and after the date of said citation.

58 Now the condition of the above obligation is such, that if the said State of Missouri, Public Service Commission of the State of Missouri, and Kansas City Gas Company shall prosecute said

appeal to effect, and answer all costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed by

STATE OF MISSOURI,

By JESSE W. BARRETT, *Atty. Genl.*,

By M. E. OTIS, *Asst. Atty. Genl.*,

[SEAL.]

PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI,

By JNO. A. KURTZ, *Chairman*,

By JAS. PAINTER, *Secretary*.

[SEAL.]

KANSAS CITY GAS COMPANY,

By C. W. GREEN, *Vice President*.

[SEAL.]

AMERICAN SURETY COMPANY OF
NEW YORK,

By A. I. ZIMMERMAN, *Res. Vice Pres.*

Attest:

W. R. EVANS,

Res. Asst. Sec.

The foregoing bond and surety thereon is approved.

EDWIN R. DURHAM,

Clerk.

59 And afterwards, to-wit, on the 14th day of October, 1922,
an Order extending the time for filing Transcript was filed
and entered of record in words and figures as follows:

60 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commis-
sion of the State of Missouri and Kansas City Gas Company, Com-
plainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Order.

Filed 10—22.

This cause came on for further hearing on the application of ap-
pellants from the order entered herein on September 20, 1922, for
an order enlarging the time for filing their records with the Clerk
of the Supreme Court, and upon consideration thereof:

It is ordered, That the appellants do have and are hereby given an extension of time to and including the 21st day of November, 1922, to docket their case and file their record thereof with the Clerk of the Supreme Court of the United States.

ARBA S. VAN VALKENBURGH,
Judge.

Dated October 14, 1922.

61 And afterwards, to-wit, on the 28th day of October, 1922,
Notice of lodging Statement of Evidence with Clerk and of
filing Præcipe for Transcript was filed.

Said Notice is in words and figures as follows, to-wit:

62 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI, on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Commis-
sion of the State of Missouri and Kansas City Gas Company, Com-
plainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant; KAN-
SAS CITY GAS COMPANY, Intervenor.

Notice.

Filed 10-28-22.

To the Kansas Natural Gas Company and H. O. Caster, R. D. Gar-
ver, and Richard J. Higgins, its attorneys of record, Greetings:

You will please take notice that the appellants have lodged their
statement of the evidence in the office of the Clerk of the above en-
titled court for your examination and have filed their præcipe for
the transcript of the record on appeal; and that they will on the 8th
day of November, 1922, at ten o'clock A. M., or as soon thereafter
as convenient to the court, at the courtroom of the United States
District Court for the Western Division of the Western District of
Missouri apply to the court or a judge thereof to approve said state-
ment of the evidence and settle said record on appeal to the Supreme
Court of the United States. JESSE W. BARRETT,

Attorney-General of the State of Missouri;

L. H. BREUER,

JAMES D. LINDSAY,

Solicitors for the Public Service Commission of Missouri.

J. W. DANA,

Solicitor for Kansas City Gas Co.

Service of the foregoing notice and receipt of copy of the præcipe are acknowledged and accepted this 28th day of October, 1922.

H. O. CASTER,
R. D. GARVER,
R. J. HIGGINS,

Solicitors for Kansas Natural Gas Co.

63 And afterwards, to-wit, on the 28th day of October, 1922, Præcipe for Transcript was filed.

Said Præcipe for Transcript is in words and figures as follows, to-wit:

64 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI, on the Relation of JESSE W. BARRETT, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri and Kansas City Gas Company, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant; KANSAS CITY GAS COMPANY, Intervenor.

Præcipe for Transcript of Record.

Filed 10-28-22.

To the Clerk:

You will please prepare the transcript of the record in the above entitled case to be filed in the office of the clerk of the Supreme Court of the United States under and pursuant to the appeal heretofore taken to said court in this case by the State of Missouri, on relation of Jesse W. Barrett, Attorney-General of the State of Missouri, and the Public Service Commission of the State of Missouri, and Kansas City Gas Company; and you will please include in said transcript of the record the following pleadings, proceedings, evidence and papers on file in your office, to wit:

1. Bill of complaint, omitting all exhibits.
2. Answer of Kansas Natural Gas Company to the bill of complaint.
3. Reply of State of Missouri and Public Service Commission of Missouri to answer of Kansas Natural Gas Company.
- 65 4. Motion of Kansas City Gas Company to be made a party.

5. Order making Kansas City Gas Company a party complainant and allowing same to intervene.

6. Intervening bill of complaint of Kansas City Gas Company, omitting all exhibits.

7. Answer of defendant to bill of Kansas City Gas Company.

7½. Stipulation for statement of the evidence.

8. Statement of the evidence, including all exhibits.

9. Decree.

10. Assignment of errors.

11. Notice of appeal.

12. Application for appeal.

13. Order allowing appeal.

14. Appeal bond.

15. Citation.

16. Order extending time to docket case and file record.

17. Præcipe.

18. Notice of lodgment of statement of the evidence and filing of præcipe.

19. Order of court approving the statement of the evidence.

66 The intent and purpose hereof being to avoid all duplication of any matter attached to any pleading introduced or embraced in the statement of the evidence; said transcript to be prepared as required by law and the rules of this court and the Supreme Court of the United States and transmitted to the office of the clerk of the Supreme Court of the United States pursuant to the citation issued herein and lodged with the clerk of the Supreme Court of the United States on or before the 21st day of November, 1922.

JESSE W. BARRETT,

Attorney-General of the State of Missouri.

JAMES D. LINDSAY,

Solicitor for Public Service

Commission of State of Missouri.

J. W. DANA,

Solicitor for Kansas City Gas Company.

67 And afterwards, to wit, on the 14th day of November, 1922, a Stipulation relative to the Statement of Evidence, and the Statement of Evidence were filed.

Said Stipulation and Statement of Evidence are in words and figures as follows, to wit:

68 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI, on the Relation of JESSE W. BARRET-, Attorney
General of the State of Missouri, and the Public Service Com-
mission of the State of Missouri and Kansas City Gas Company,
Complainants,

VS.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant, KANSAS
CITY GAS COMPANY, Intervenor.

Stipulation.

Filed 11-14-22.

It is stipulated and agreed That the statement of the evidence
heretofore filed by the complainants and the statement of objections
and amendments proposed by defendant to said statement of the evi-
dence, heretofore filed by the defendant, may be withdrawn and
that in lieu thereof the attached statement of the evidence prepared
by complainants in conformity to defendant's objections may be
filed; and that the defendant will present no objections to said state-
ment of the evidence and the same may be approved by the court.

J. W. DANA,

Counsel for Complainants.

R. J. HIGGINS,

Counsel for Defendant.

69 In the District Court of the United States for the Western
Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI, on the Relation of JESSE W. BARRETT, Attorney
General of the State of Missouri, and the Public Service Com-
mission of the State of Missouri and Kansas City Gas Company,
Complainants,

VS.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant, KANSAS
CITY GAS COMPANY, Intervenor.

70

Statement of the Evidence.

Now come the appellants and file this their statement of the evi-
dence and request the Clerk to include the same in the record on ap-
peal of the above entitled case to the Supreme Court of the United
States.

On June 26, 1922, the issues arising upon the bill of complaint, the answer thereto and the reply to said answer, the intervening bill of complaint of the Kansas City Gas Company and the answer of the defendant Kansas Natural Gas Company to said intervening bill of complaint of the Kansas City Gas Company, came on for final hearing. All of the evidence hereinafter set forth is evidence introduced by the complainants and the intervenor. No evidence was introduced by the defendant Kansas Natural Gas Company. The evidence so introduced by the complainants and the intervenor is as follows:

I.

By stipulation the following facts were agreed to:

(1) That the Kansas Natural Gas Company is in the control of and now operates all of the properties owned by the Kansas City Pipe Line Company, the Kaw Gas Company and Kansas Natural Gas, Oil, Pipe Line and Improvement Company, under private arrangements between said companies and the Kansas Natural Gas Company; that the contract attached to the bill of complaint as Exhibit B was, after its execution, assigned by McGowan, Small and Morgan to the Kansas City Gas Company and by the Kansas City Pipe Line Company to the Kansas Natural Gas Company.

71 (2) That during the year 1906, the Kansas City Gas Company or its predecessors commenced to furnish and sell natural gas to Kansas City, Missouri, and its inhabitants under the terms and provisions of Ordinance No. 33887 of said city, and that Exhibit A to the bill of complaint is a true copy of said ordinance.

(3) That from 1906 to October 12, 1912, the Kansas Natural Gas Company furnished gas to the Kansas City Gas Company and the latter accepted, received and paid for the same under and in conformity with the terms and provisions of said contract, Exhibit B to the bill of complaint.

(4) That from October 12, 1912, to August 13, 1917, the Kansas Natural Gas Company was operated by receivers appointed by this court, and by receivers appointed by the District Court of Montgomery County, Kansas, and said receivers took over the company's property, affairs and business and operated them under orders of the respective courts without specifically adopting said contract (Exhibit B) which was subject to rejection by the court; but continued to deliver gas to the Kansas City Gas Company and accepted payments therefor at the rates provided for in said contract.

(5) That from August 13, 1917, to January 1, 1921, the receivers of the Kansas Natural Gas Company furnished gas to the Kansas City Gas Company and other local distributing companies, under and pursuant to certain administrative orders of the United States District Court for the District of Kansas; true and correct copies of which are hereto attached, marked Exhibits A, B, C, D and E, and made a part hereof.

(6) That on December 24, 1920, the United States District Court for the District of Kansas in *Landon v. Court of Industrial Relations for the State of Kansas, et al.*, No. 136-N, entered a decree relating to certain contracts between the Kansas Natural Gas Company and the local distributing companies, including the contract Exhibit B to the bill of complaint; a true and correct copy of said decree is hereto attached, marked Exhibit F, and made a part hereof.

(7) That on or about the 24th day of December, 1920, the United States District Court for the District of Kansas, made and entered its decree ordering the receivers of the Kansas Natural Gas Company to return the property of the Kansas Natural Gas Company under its control to the Kansas Natural Gas Company on January 1st, 1921, which said order was complied with, and said property was returned to the corporation, and since said date has been operated and the business thereof conducted by said corporation.

(8) That on May 3, 1920, the Kansas City Gas Company filed an application with the Public Service Commission of Missouri; a true and correct copy of which is hereto attached, marked Exhibit G, and made a part hereof.

72 (9) That on June 14, 1920, the Public Service Commission of Missouri made and filed and issued its report and order upon said application of the Kansas City Gas Company made on May 3, 1920; a true copy of which report and order is hereto attached, marked Exhibit H, and made a part hereof.

(10) That the Kansas Natural Gas Company produces or-and purchases and transports gas from points in the state of Oklahoma and points in the state of Kansas to points in the states of Kansas and Missouri; that it sells no gas direct to consumers except to a few mainline consumers and to consumers in the Joplin, Missouri, mining district; that all of the gas produced or purchased in Oklahoma and in Kansas by the Kansas Natural Gas Company is so intermingled in the pipe lines that it cannot be distinguished; that said gas is transported to the various cities in the states of Kansas and Missouri where the Natural Gas Company maintains permanent physical connections within the state of Missouri, as hereinafter described between its pipeline system and the plant and street main system of the Kansas City Gas Company; that the Kansas City Gas Company maintains gas-holders in connection with its distribution system, having a reserve storage capacity of 5,000,000 cubic feet of gas. In case of line-breaks, interruptions or shortages in the pipeline supply, this reserve holder gas is used to supply the consumers.

(11) That the gas delivered by the Kansas Natural Gas Company to the Kansas City Gas Company is measured at two separate measuring stations operated by said Kansas Natural Gas Company. One is located immediately west of the Kansas-Missouri state line in Kansas, from which station the Kansas Natural Gas Company's pipeline is extended some eight feet into the state of Missouri and upon a public street of Kansas City, Missouri, and there physically and per-

manently connected to the street main system of the Kansas City Gas Company. The gas delivered at this station is measured or computed and billed to the Kansas City Gas Company in accordance with the measurements of the meter located in Kansas. The second measuring station is located near the Kansas-Missouri state line in the state of Missouri at which point about one-third of the total gas furnished to the Kansas City Gas Company is measured and delivered. The Kansas Natural Gas Company maintains at this second connection about 500 feet of pipe line between the Kansas and Missouri state line and said measuring station which pipeline is located on a public street of Kansas City, Missouri. The gas furnished through this station is measured or computed and billed to the Kansas City Gas Company in accordance with the measurements of the meter located in Missouri. The Kansas Natural Gas Company has no franchise granted by the city of Kansas City, Missouri, authorizing it to occupy the streets, alleys or public places upon and along which to lay, maintain or operate its pipelines.

(12) That there are no advance orders given by the Kansas City Gas Company to the Kansas Natural Gas Company for the shipment of any definite quantity of gas to Kansas City, Missouri, at any given time, but said gas is furnished and delivered continuously to meet the requirements of the Kansas City Gas Company, as governed by the requirements of its consumers from time to time.

73 (13) That the pipe lines operated by the Kansas Natural Gas Company extend from the state of Oklahoma into and through the state of Kansas and into the state of Missouri, and said Kansas Natural Gas Company furnishes gas to local distributing companies in some thirty towns and villages in the states of Kansas and Missouri; that said pipe lines lie, in the main, on the privately owned rights-of-way of the Kansas Natural Gas Company, but cross public highways and, in some instances, run along the public highways in the states of Missouri and Kansas.

(14) That the population of Kansas City, Missouri, is approximately 360,000, and that the population served by the distributing companies receiving their gas from the Kansas Natural Gas Company in Kansas and Missouri exceeds one-half million.

(15) That no joint ownership or inter-corporate relation exists between the Kansas Natural Gas Company and Kansas City Gas Company or any other local distributing company.

II.

That the contract referred to in paragraph (1) of said stipulation attached to the bill of complaint as Exhibit B, and admitted by the answer, reads as follows:

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74 *Agreement between the Kansas City Pipe Line Company and
Hugh J. McGowan, Charles E. Small and Randal Morgan.*

Dated December 3, 1906.

11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17, 1906, but if the city of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said ordinance No. 33887, then this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made."

74-1 This agreement, made this 3rd day of December, 1906 between the Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania, parties of the second part.

Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them;

And whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto marked "Exhibit No. 1," and desire to secure a supply of natural gas for the said city and its inhabitants.

Now, therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas

74-2 in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under his contract undertake to furnish the parties of the second part with an uninterrupted supply of

gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, copy of which is hereto attached.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part
74-3 herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent. of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent. of such gross receipts. The parties of the second part make no agreement with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said

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74-4 ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the parties of the second part shall be at liberty to obtain the same from such other sources as they may find available.

3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times during ordinary business hours, to have such access to such books of the parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

4. The parties of the second part hereby agree that they will

(1) On or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have complied with their reasonable rules and regulations; and (2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and (3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the parties of the second part shall not be required to furnish patrons from circulating mains; and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the commencement of work or the laying of pipes by the parties of the second part necessary for the furnishing of gas to consumers as herein agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the parties of the second part or by any persons with whom they may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part or such other persons, or by

inclement days or by labor strikes, or by any cause beyond the control of the parties of the second part or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company provided for in said ordinance hereto attached shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly extended for a like period or periods.

5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled, and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be the duty of the parties of the second part to keep and maintain their distributing system in good order and condition.

7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the city of Kansas City, Missouri, for street lamps, so far as the street lamp posts, or an equivalent number, set and in place on September 27, 1906, (the date of the passage and approval of said ordinance) are concerned, and as to any additional number it is hereby agreed that ten thousand (10,000) cubic feet per lamp per annum, at fifteen (15) cents per thousand cubic feet, shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part

free of charge for use in the said street lamp posts, or an equivalent number, set and in place on said September 27, 1906, and to additional posts that may be set by the city at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory having the largest circulation including the names of business firms, should the city of Kansas City, Missouri, elect to take natural gas free and itself furnish or contract with others for the incandescent equipment, and for maintaining, repairing, cleaning, lighting and extinguishing. And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison, and all city buildings in said city.

74-8 8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof, in the following words, to-wit: "but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices," shall at once become inoperative and cease to have any effect but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part from the sale of natural gas in said city at any prices for which the said parties of the second part may choose to sell the same.

74-9 9. The parties of the second part shall have the right, authority and power to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all their rights, titles and interests hereto, herein and hereunder; and they agree that they will, on or before December 31, 1907, assign and convey this agreement and all of their rights, titles and interests hereto, herein and hereunder to a corporation organized under the laws of the State of Missouri and competent to take such assignment, and that such corporation shall thereupon accept such assignment

and the party of the first part agrees that upon such assignment and acceptance, and written notice thereof to the party of the first part, accompanied by a copy of the assignment, and by a copy of the acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they may reasonably require. The said corporation organized under the laws of the State of Missouri, and its successors and assigns, shall also have the right, authority and power, to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all its or their rights, titles and interests hereto, herein and hereunder.

10. This agreement shall be binding upon the successors and assigns of the parties hereto.

11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17, 1906, but if the city of Kansas City shall acquire the gas 74-10 plant, pipes and property of the grantees named in said ordinance No. 33887, then this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made.

In witness whereof the parties hereto have duly executed these presents the day and year first above written.

[Corporate Seal.]

THE KANSAS CITY PIPE LINE COMPANY,
By PAUL THOMPSON,

Attest: *President.*
C. M. LATOURETTE,
Secretary.

Signed, sealed and delivered by Kansas City Pipe Line Company
in presence of

D. N. OGDEN.
W. F. DOUTHIRT.

HUGH J. MCGOWAN.

[SEAL.]

Signed, sealed and delivered by Hugh J. McGowan in presence of
ANNA L. BOWMAN.

CHARLES E. SMALL.

[SEAL.]

Signed, sealed and delivered by Charles E. Small in presence of
CALEB S. MONROE.

RANDAL MORGAN.

[SEAL.]

Signed, sealed and delivered by Randal Morgan in presence of

GEORGE S. PHILLER.
W. F. DOUTHIRT.

74-11 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Be it remembered That on this 3rd day of December, 1906, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came Paul Thompson, President of The Kansas City Pipe Line Company, a corporation duly organized, incorporated and existing under the laws of the State of New Jersey, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself, the President thereof.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

[Notarial Seal.]

F. H. MACMORRIS,
Notary Public.

My commission expires 2/12/1909.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, Thomas K. Finletter, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy James W. Fletcher, authorized by Act of Assembly of May 26, 1897, Certify, That F. H. MacMorris, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a Notary

74-12 Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 4th day of December in the year of our Lord one thousand nine hundred and six.

[SEAL.]

THOMAS K. FINLETTER,

Prothonotary,

By JAS. W. FLETCHER,

Dep. Prothonotary Durante Absentia Secundum Legem.

STATE OF INDIANA,

County of Marion, ss:

On this 6th day of December, 1906, before me personally appeared Hugh J. McGowan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal at Indianapolis, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 19th day of September, 1908.

(Notarial Seal.)

ANNA L. BOWMAN,

Notary Public.

74-13 STATE OF INDIANA,

County of Marion, set.

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court, within and for said County and State, the same being a Court of Record, and having a seal, do hereby certify that Anna L. Bowman, whose name is subscribed to the acknowledgment to the annexed instrument, was at the time of taking such acknowledgment, to-wit: Dec. 6, 1906, an acting Notary Public within and for the County aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify the same, as well as take and certify all affidavits, and the acknowledgment and proof of deeds or conveyances, and all other instruments of writing.

And further, that I am well acquainted with the handwriting of said Anna L. Bowman, and verily believe that the signature to said Certificate or Proof of Acknowledgment or Jurat is genuine and that said instrument is executed and acknowledged according to the laws of the State of Indiana.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Indianapolis, Indiana, this 6th day of December, A. D. 1906.

[SEAL.]

WILLIAM E. DAVIS,

Clerk.

STATE OF MISSOURI,
County of Jackson, ss:

On this 7th day of December, 1906, before me personally appeared Charles E. Small, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

74-14 In witness whereof, I have hereunto set my hand and affixed my official seal at Kansas City, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the eighteenth day of September, 1910.

(Notarial Seal.)

CALEB S. MONROE,
Notary Public.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

On this 4th day of December, 1906, before me personally appeared Randal Morgan, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal at Philadelphia, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 12th day of February, 1909.

(Notarial Seal.)

F. H. MACMORRIS,
Notary Public.

74-15

EXHIBIT No. 1.

No. 33887.

An Ordinance Authorizing Hugh J. McGowan, Charles E. Small, and Randal Morgan, the survivors or survivor of them, and Their or His Assigns, to Lay, Acquire, and Maintain Pipes in Kansas City for the Purpose of Supplying Natural Gas to said City and Its Inhabitants.

Be it Ordained by the Common Council of Kansas City:

Section 1. Subject to the provisions of the present city charter, and to the same provisions so far as they may be embodied in any future charter of the city, permission, right, privilege and authority are hereby granted unto Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, for the full period of thirty (30) years from and after the approval and taking effect of this ordinance, within the present or any future corporate boundaries of the City of Kansas City, to lay and maintain gas pipes, regulators and appliances below the surface of the streets, avenues, boulevards, alleys and public grounds of said

city, and on the bridges and viaducts owned by said city (provided such bridges and viaducts are of sufficient strength to carry such pipes), for the purpose of carrying and distributing natural gas and selling and supplying the same for private and public use, all upon the conditions provided for in this ordinance.

Section 2. Since it is a matter of large financial concern to the people of Kansas City, as well as the city itself, to secure natural gas within the shortest reasonable time, the grantees (which term 74-16 wherever used in this ordinance shall include the several grantees herein named, the survivors or survivor of them and their or his assigns) agree that they will.

(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have complied with the reasonable rules and regulations of the grantees; and

(2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and

(3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the grantees shall not be required to furnish patrons from circulating mains.

And said grantees shall within ten (10) days after this ordinance becomes a law file their written acceptance of the same as hereinafter provided, and at the time of filing their written acceptance shall deposit with the City Treasurer, as a special fund fifty thousand dollars (\$50,000.00) in cash, to become the property of the city, unless the requirements of paragraph one (1) of this section hereinbefore mentioned shall be performed within the time above specified.

Whenever the grantees shall file with the City Treasurer a certificate of the Board of Public Works, or other Board or officer of the city then performing the functions of the present Board of Public

74-17 Works, stating that the grantees have complied with the requirements of paragraph one (1) of this section respecting the furnishing of natural gas in the city, the Treasurer shall repay to the grantees the said sum of fifty thousand dollars (\$50,000.00); and it shall be the duty of the Board of Public Works, upon compliance by the grantees with the said requirements, to make and deliver to them said certificate.

In order to secure their compliance with the requirements of paragraphs two (2) and three (3) of this Section respecting the furnishing of natural gas in the city, the grantees shall, within twenty (20) days after filing their acceptance of this ordinance, execute and deliver to the city their bond, in form approved by the City Counselor, with surety to the approval of the Mayor and City Comptroller, in the sum of two hundred and fifty thousand dollars (\$250,000.00), to be paid to the city as liquidated damages if the grantees shall fail

to comply with the said requirements, said sum being agreed upon by both parties hereto as representing the liquidated damages, for the reason that said parties appreciate and agree that it will be impossible to measure such damages after the breach; and said bond shall be by the city surrendered and canceled on the certificate of the Board of Public Works, which shall be granted when grantees have fulfilled said requirements.

If the commencement of work or the laying of pipes by the grantees necessary for the furnishing of gas to consumers as in this section agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the grantees or by any persons with whom the grantees may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the grantees or such other persons, or by inclement days or by labor strikes, or by any cause beyond the control of the grantees or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company hereinafter provided for shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly extended for a like period or periods but such delay or hindrance, in order to entitle the grantees to an extension of time hereunder, must actually so hinder and delay, and must so result after the grantees have done all in their power to prevent and obviate such hindrance and delay. But no such delay shall be excused or time extended on account thereof, if the grantees can, by the exercise of reasonable diligence, and at reasonable expense obtain natural gas elsewhere.

Section 3. All pavements and sidewalks shall be taken up and all excavations in said streets, avenues, boulevards, sidewalks, lanes, highways, alleys and public grounds, shall be made under the supervision of the Board of Public Works, and such pipes, regulators and appliances shall be located in such portion of the streets, avenues, boulevards, lanes, highways or public grounds as may be designated by the Board of Public Works, using alleys as far as practicable; provided, that said pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the grantees to their former condition; and if such pavement shall have been laid under any guaranty for its maintenance and repair for any period of time, the said grantees shall also keep said restored pavements in repair for the unexpired period of such guaranty. Should said grantees fail or refuse to replace or restore said pavement, sidewalk and excavation, within a reasonable time, then the same may be replaced and restored by the city, under the direction of the Board of Public Works, at the cost and expense of the grantees, who shall, before commencing the work of making any excavation, deposit with the City Treasurer the sum of one thousand dollars (\$1,000.00) in money, for the faithful compliance with this section;

and as often as any portion of said sum is used by said Board, said grantees shall on notice from said Board deposit a corresponding sum with the City Treasurer. Before any excavations are made by said grantees at any time in any street or highways, for any of the purposes named in this ordinance, a permit therefor shall be obtained from the proper officer of said city, which permit shall state the particular part of the street or highway where said work is to be done and the length of time said permit shall authorize work to be done thereunder. The work done under such permits shall be under the inspection of a competent inspector designated by the City Engineer, for whose time, reasonably employed in such service, the grantees shall repay the city at the rate of three dollars and sixty cents (\$3.60) per day.

Section 4. Said grantees shall not open or encumber at any one time more of any such highway or public place than may, in the opinion of the Board of Public Works, be necessary to enable them to proceed with advantage in laying or repairing mains and pipes, nor shall they permit any such highway or public place so opened or encumbered by them to remain open or encumbered for a longer period of time than shall, in the opinion of the Board of
74-20 Public Works, be necessary. In all cases where any such highway or public place shall be encumbered or excavated by the said grantees they shall take all precautions for the protection of the public usual in such circumstances, and such as may now or hereafter be required by the general ordinances of said city. Whenever the city shall grade or regrade any street, alley or public highway, along or across which said grantees shall have constructed any pipes or mains, it shall be the duty of said grantees, at their own expense to change said pipes or mains so as to conform to the street, alley or public highway so graded or regraded, on an order therefor from the Board of Public Works of said city.

Section 5. Said grantees shall, at their own expense, bring connecting pipes for consumers to the inside of the curb lines, or to the property line in such cases in which mains are laid in alleys, and construct shut-offs; and may, with the approval of the Board of Public Works, make, such reasonable rules and regulations for making connections for private consumers with the distributing or service pipes of said grantees as they may deem proper. No person, company or corporation shall make any such connections without first obtaining a permit therefor from said grantees. Said grantees shall at all times keep and maintain such pressure of gas in all places where the same may be furnished to Kansas City and its inhabitants as may be required by ordinance; provided, the pressure so required shall be reasonable and practicable.

Section 6. Said grantees shall extend their pipes and mains for the distribution of natural gas on such graded streets, avenues, sidewalks, lanes, highways, alleys and public places as may be named
74-21 by ordinance, followed by notice from the Board of Public Works to proceed thereunder, and within the time specified

in said notice; provided, that in every such case at least three consumers on an average for every two hundred feet of extension so made necessary shall first, in writing, agree to take such gas from said grantees for a period of not less than one year, at the general rates; provided, that if the graded street, avenue or highway is about to be paved under ordinances of said city, such extension shall be made ahead of the paving, including connections to curb in cases where buildings are already located, without regard to the number of consumers thereon, and gas shall be furnished by grantees on such extensions. Every ordinance providing for extending pipes and mains as above mentioned shall have appended thereto the signatures of the required number of prospective consumers, and such ordinance shall contain a provision that in case such prospective consumers, or any of them, causing the reduction below the required number of consumers, fail within thirty (30) days after demand has been made by said grantees, to enter into the contract with the grantees as herein required, such ordinance shall not be enforced. If the grantees should fail or refuse to obey any such ordinance for a period of ninety (90) days after the approval of the same, and after said consumers have made the agreements aforesaid, they shall pay to the city the sum of five dollars (\$5) for each and every day that such failure or refusal continues. Failure to obey each ordinance shall constitute a separate violation, and shall entitle the city to the aforesaid sum for the violation of each and every specific independent case.

Section 7. Said grantees shall have the right to shut off gas from any consumer who may be in arrears for a longer period than fifteen (15) days, and the delinquent consumer can reinstate his
74-22 right to obtain gas on payment of the bill and shutting off
charge of fifty cents.

Section 8. In constructing, repairing and operating said gas plant said grantees shall use every reasonable and proper precaution to avoid damage or injury to persons or property, and shall, at all times and in all places, hold and save harmless the said city from all and every such damage, injury, loss or expense, caused or occasioned by reason of any act or failure to act of said grantees in the construction, repairing or operating of said gas plant or any part thereof, or in the paving, repaving or repairing of any street, or by reason of any act done by said grantees.

Section 9. The said grantees shall file with the Board of Public Works of said city, on or before the first day of February in each and every year, a statement or plat, duly verified, of all pipes, mains, shut-offs and appliances of every kind and nature laid, constructed or built by them in said highways or public places, during the preceding calendar year, and the location thereof; which shall be, by said Board of Public Works, copied into a book kept by it for that purpose.

Section 10. For the purpose of enforcing the provisions of this ordinance and securing the correct measurements of gas furnished

under the same and the proper pressure of said gas to produce the best obtainable results with the least consumption of gas, with due regard to the reasonableness and practicability of such pressure, and to prevent the waste thereof and to protect the city in its corporate rights, and to protect the consumers in their rights, the city shall have the right to provide, by ordinance, for the appointment of one or more inspectors or measurers of gas, and to prescribe their duties

by ordinance, and to pass such ordinances as may be necessary to enforce the provisions of this ordinance. The city shall pay all costs and charges of such inspection and measurements, the same to be regulated and fixed by ordinance, including the salaries of said inspectors or measurers, and the grantees shall reimburse the city for all these charges, the money to be paid within thirty (30) days after the payment thereof and demand therefor by the city; provided such charges shall be reasonable. The grantees shall also supply and set meters for measuring gas free of charge to consumers, which shall, however, be and remain the property of the grantees and freely accessible to them at all reasonable times, and consumers shall be responsible for negligently or wilfully injuring any meters.

Section 11. The said city shall enact all needful and requisite ordinances to protect said grantees, their works and property, from damages, impositions and frauds, and to prevent unnecessary waste of gas, and said grantees shall have the power to make all reasonable needful rules and regulations for the collection of their revenues, prevention of waste and the conducting and management of their business as they may, from time to time, deem necessary; but the city shall incur no liability by any failure to enact any such ordinance, and the city does not hereby waive its rights of governmental control over this subject matter.

Section 12. Said grantees shall have the right to shut off the gas temporarily from their mains and pipes or any portion thereof, for the purpose of making repairs or extensions of their plant or while repairs or extensions are being made to the pipes or apparatus by which the grantees obtain their supply of natural gas, and shall not be liable to said city or any consumer for any damage occasioned by said temporary suspension of said supply of gas; provided, such repairs and extensions are made with due diligence; and provided, that whenever it is practicable notice of such shutting off of the supply of gas shall be given to consumers by publication in one or more daily newspapers in said city.

Section 13. The said grantees shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed twenty-five cents per thousand cubic feet, and during the period of five years next thereafter at the rate of not to exceed twenty-seven cents per thousand cubic feet, and thereafter during the period of the aforesaid grant at the rate of not exceeding thirty cents per thousand cubic feet, and may also make special contracts with consumers at less than the general rate then in force, based upon the

amount of gas used and in the conditions of the contract, which special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the city clerk, and each and every change therein shall also be filed with the city clerk, and be open to public inspection. The grantees agree that they will at all times make special contracts at as low rates as those at which natural gas is sold at the time to any consumers of the same class using the same amount of gas under the same contract conditions who are located approximately as distant from the fields from which they are at the time supplied as Kansas City, Missouri, is from the fields from which it is at that time supplied and who are supplied by the grantees, or anyone from

74-25 whom the grantees obtain their supply, or anyone whose supply is obtained from those from whom the grantees obtain their supply; provided that this agreement to make such special contracts at such rates shall not be construed to compel the grantees to make such special contracts at as low rates as those in effect at the time in any locality where the grantees, or those from whom the grantees obtain their supply, or any one supplied by those from whom the grantees obtain their supply, may be in bona fide competition with any other supplier of natural gas in such locality; but if the demand from special rate consumers threatens the general supply, the grantees may shut off the supply from any special rate consumer, which shall include all other than domestic consumers, in whole or in part, and if the grantees fail or refuse to do so, the city council may by ordinance require the grantees so to do; provided always that the said grantees shall have the right to charge ten (10) per cent additional to all consumers who are in arrears for a longer period than ten (10) days; and provided, further, that the grantees may charge and collect from each person who has a meter installed a minimum monthly bill of fifty cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of fifty cents, such consumer shall not be charged any minimum bill for that month.

Under the permission and authority hereby granted, the grantees shall furnish natural gas for illuminating, heating and mechanical purposes, which shall at all times be of the same character and quality as when it comes from the earth; and it shall not be mixed with air or otherwise adulterated.

74-26 Section 14. Should the supply of natural gas, obtainable by grantees reasonably accessible, be, at any time hereafter during the life of this ordinance, inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, or should the Common Council of Kansas City so find at any time (and in the event of a disagreement as to the facts in this respect either party or a gas consumer may have recourse to the courts to establish the facts), they shall not be longer required to do so, but shall manufacture and furnish manufactured gas to said city and its inhabitants through said mains and pipes under the provisions of this ordinance as far as applicable and subject to all

the terms and provisions contained in the ordinance number 6658 granted to Milton J. Payne and others passed August 24, 1895, and the ordinance number 6125 granted to Robert M. Snyder and others, passed January 10, 1895, and the ordinance number 8033, entitled: "An ordinance granting the consent of Kansas City to the consolidation of the Missouri Gas Company and the Kansas City Gas Company," until the expiration of said ordinances and no longer, except as to price, which shall be settled by arbitration, in the following manner:

The grantees shall not discontinue furnishing natural gas without serving at least six months' written notice upon the Mayor of Kansas City of their intention so to do. If grantees and the city cannot agree on the price which shall be thereafter charged for manufactured gas within ninety (90) days after the service of such notice Kansas City and said grantees shall each select one of the judges of the circuit court of Jackson County, Missouri, as an arbitrator, and the two judges so appointed shall immediately choose a third judge of said circuit court. The three judges so appointed

74-27 shall proceed at once to investigate the matter and shall hear fully all such evidence as is presented to them by either party and shall within ninety (90) days after their appointment make their finding in writing, fixing the just and reasonable maximum rate to be charged by the grantees for manufactured gas during the life of the franchises above described; and said finding, when signed by not less than two of said judges, shall be conclusive between the city and the grantees herein; one copy shall be filed in the office of the city clerk of Kansas City, another with the grantees, and said grantees shall at no time have the right or power to return to the manufacture, distribution or sale of manufactured gas in Kansas City until after such arbitration and award as is herein provided for unless they shall conform to the provisions of said award.

Section 15. As a consideration for the aforesaid grant, the said grantees are hereby required to make a true and faithful report under oath to said city on the first day of February and August in each year for the six months ending on the last day of December and June last preceding, showing the gross amount of money received by them from all such gas delivered to consumers within the corporate boundaries of said city, and shall pay into the City Treasury within fifteen (15) days thereafter an amount equal to two (2) per cent of said gross receipts for said preceding six months. Said city shall have the right at all reasonable times to make such examination and inspection of the books of said grantees as may be necessary to determine the correctness of such reports.

Section 16. All things provided to be done by the Board of Public Works, or other department of the city, may be performed

74-28 by any other official or department of said city when so provided by ordinance or charter of said city.

Section 17. If the said grantees shall do or cause to be done any act or thing by this ordinance prohibited, or shall fail, refuse or neglect to do any act by this ordinance required, they shall forfeit all rights and privileges granted by this ordinance, and this franchise and all rights thereunder granted shall ipso facto cease, terminate and become null and void, provided such failure to comply with the conditions of this ordinance shall continue unrectified for sixty (60) days after written notice, thereof from the Board of Public Works of said city, or the Common Council of said city.

Section 18. The said grantees shall, within ten (10) days after this ordinance becomes a law, file in the office of the City Clerk of said city a written acceptance of the terms, obligations and conditions in this ordinance set forth, in such form as shall be approved by the City Counselor, and unless such written acceptance shall be so filed, this ordinance shall become null and void.

Section 19. As long as natural gas is furnished and sold to the inhabitants of said City of Kansas City under this franchise, said grantees shall, in consideration of this grant, furnish free to the City of Kansas City natural gas for light in the City Hall, City Prison and all city buildings; provided, that all such lights shall be kept extinguished when not needed for illuminating purposes; the city to furnish its own burners, mantles, fixtures and appurtenances, and maintain and keep the same in repair.

Section 20. In order that the city and its inhabitants may receive the benefits of natural gas more speedily and with less disturbance of the streets and inconvenience to the public than would otherwise be possible, the grantees are hereby authorized to acquire the ownership or use or control, by purchase, lease, agreement or otherwise, of the pipes and property of the Kansas City Missouri Gas Company, the consent of the city being hereby given to said company, its successors and assigns, to make such transfer, lease or disposition of its pipes and property to the grantees, and during the time the pipes and property of said company shall be in the possession or under the control of the grantees, said company, its successors and assigns, shall be relieved of any obligation to supply manufactured gas (provided, however, that no consumer of manufactured gas shall be deprived thereof by anything done under this section until such consumer can obtain natural gas from grantees), but the acquirement by the grantees of such ownership or use or control of the pipes and property of the Kansas City Missouri Gas Company, shall be subject to the right of the city to purchase the same under the special provisions of the several ordinances under which said company is now operating, and said right of purchase under said special provisions, shall apply not only to the pipes and property of the Kansas City Missouri Gas Company, as acquired by said grantees, but also to all other pipes and property owned by the grantees in Kansas City, Missouri, and used in connection with said plant, the value of such other pipes and property to be determined at the same time, in the same manner and in the

same proceedings. And grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations), that under the terms thereof, after two years from the time the natural gas is first furnished to

74-30 Kansas City thereunder, the division of the gross income received for said gas between the distributing company and the supply company shall be in the proportion of thirty-

seven and one-half cents out of each dollar to the former, and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the City Clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this ordinance shall be null and void. Provided, however, that Kansas City agrees not to exercise the right to purchase the pipes and property of the Kansas City Missouri Gas Company, and of the grantees, under said special provisions, for the period of ten years from the time of the acceptance of this ordinance by grantees, unless grantees shall before the expiration of said period of ten years have ceased to furnish natural gas as required by this ordinance, in which event the right to make

74-31 such purchase under such special provisions shall be no longer postponed; in consideration whereof the grantees agree during all the time they may be supplying natural gas to bid annually,

(1) to fit the street lamp posts at present set and in place with incandescent equipment, to furnish natural gas to the same, and to maintain, repair, clean, light and extinguish the same, upon the all night schedule, for the price of not to exceed nine dollars (\$9.00) per lamp per annum; and

(2) to set, on the line of their mains, such additional street lamp posts as the Council may by ordinance demand, to connect the same, to furnish the same with incandescent equipment, to maintain, repair, clean, light and extinguish and to furnish the natural gas to the same, on the all night schedule, for the price of not to exceed twelve dollars (\$12.00) per lamp per annum; or at the option of the city, in lieu of such bidding, to furnish the natural gas free and without cost to the above and to additional posts that may be set by the city, at the rate of one hundred (100) lamps for each eight thou-

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sand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory, having the largest circulation, including the names of business firms; and if the city elects to take natural gas free under this option, and to itself furnish or to contract with others for the incandescent equipment and for maintaining, repairing, cleaning, lighting and extinguishing, the city shall have the right to use for the purpose the posts at that time owned and set by the grantees, which the grantees agree shall not be less than the number which have been set and are now owned by the Kansas City Missouri Gas Company, and the city agrees that the lights shall be kept extinguished between sunrise and sunset.

Section 21. All prohibitions, amendments, forfeitures and obligations and all other provisions of this ordinance shall be binding upon the grantees, the survivors or survivor of them, and their or his assigns, whether expressly so stated herein or not; and all grants and privileges secured by this ordinance to said grantees shall be held to inure to the benefit of the survivors or survivor of them and his or their legal and bona fide successors and assigns. Nothing in this ordinance shall be construed as granting to said grantees any exclusive franchise, rights or privileges; but nothing herein shall be construed to neutralize or impair the provisions of this ordinance respecting the prohibition against the merger and consolidation.

Section 22. The said grantees shall not, except as in this ordinance provided, without the consent of the city, evidenced by ordinance, sell, lease or transfer their plant, property, rights or privileges, herein authorized, to any person, company, trust or corporation, now or hereafter engaged, or for the purpose of engaging in the manufacture or sale of gas in said city, under any other ordinance or franchise, or otherwise; and shall not without such consent at any time enter into any combination, with any person or persons, company or companies, authorized by ordinance to sell gas in said city, or with any person or persons, company or companies proposing by application for a franchise to sell gas to Kansas City or its inhabitants, concerning the rate or price to be charged for gas, to be used by the city, or private consumers; and no officer, employee or manager of the gas plant and works, to be constructed and acquired under and in pursuance of this ordinance, shall, at the same time, be in charge of, or be the officer, employee or manager of any other gas works authorized by ordinance to manufacture or sell gas in said city, except the Kansas City Missouri Gas Company, its successors and assigns, provided, however, that said grantees may convey all their rights and privileges herein granted to a corporation, its successors and assigns, to be organized by them, under the laws of the state of Missouri, for the purpose of acquiring, building, constructing and operating the gas plant authorized under this ordinance; but this shall not authorize any grantee to assign the franchise granted to it to any other company to which a franchise has been granted; and provided, further, that notice of said convey-

ance, and of any conveyance by said proposed assignee corporation, its successors or assigns, shall be filed with the City Clerk of Kansas City, Missouri, within ten (10) days after the execution thereof; and provided, further, that the grantees, or their assigns ("assigns" having the meaning above set forth), shall have the full, complete and unqualified right to assign and transfer and convey this franchise, and their property, by way of mortgage, deed of trust or other form of security in the nature of a mortgage or deed of trust, for the purpose of securing bona fide indebtedness, and for the purpose of acquiring property, and of raising funds to provide, build, construct, equip and operate said plant, and to conduct the business thereunder.

This section shall not be construed, however, in any way to prevent or hinder the grantees from taking over, for the purposes hereinbefore stated, the property or plant of the Kansas City, Missouri, Gas Company, and the taking over of the same shall never be construed as any violation of the provisions of this section 74-34 of this ordinance. And the grantees further bind themselves to enter into no pooling arrangements or any contract or merger or consolidation, either by way of a holding company, or otherwise, with any other company authorized by ordinance to manufacture or sell gas in Kansas City, except as permitted by this ordinance, and, as a matter of contract, hereby agree to obey all laws of the State of Missouri, and ordinances of Kansas City, now in existence or hereafter passed, in prohibition of mergers, consolidations and pooling.

It being the purpose to safeguard and make sure that there may always be competition in the matter of supplying gas and that gas will be supplied within the city, the grantees and assigns agree that any action on their part impairing or limiting or preventing such competition, or any substantial and continued failure for a period of sixty days to furnish gas in compliance with the provisions of this ordinance, shall constitute a violation of this ordinance, and the city shall have the right to repeal this ordinance by ordinance, and shall have the right to purchase the plant under the same terms and provisions stated in Sections 13 and 14 of ordinance of Kansas City, No. 6658, passed August 24, 1895, commonly known as the ordinance of the Kansas City, Missouri, Gas Company, but the statement of these particular remedies shall not be construed as taking away from the city any of its rights in law or equity.

Provided, the Kansas City Missouri Gas Company, and the grantees and the said corporation so to be formed by them are hereby expressly authorized to sell, lease, convey or otherwise dispose of their pipes and property of every kind, either to the other, and generally to make such contracts and agreements with each other as they may see fit, and said corporation so to be formed, its successors and assigns, may also, subject to the restrictions of this section, sell, lease, convey or otherwise dispose of its property and the franchise hereby granted, provided such action is taken subject to the terms of this ordinance. Kansas City retains to itself the right to itself own and operate a plant or plants for supplying the city, or the inhabitants thereof, with natural or

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artificial gas (if it shall at any time see fit so to do) for lighting and heating and manufacturing purposes, and to own and operate a plant or plants for supplying the city, or the inhabitants thereof, with any other sort of light.

Section 23. All ordinances or parts of ordinances in conflict with this ordinance are, in so far as they so conflict, hereby repealed. The form of the above ordinance is hereby approved.

EDWIN C. MESERVEY,
City Counselor.

Passed Sep. 27, 1906.

GEO. HOFFMANN,
President Upper House of the Common Council.

Passed Sep. 27, 1906.

D. R. SPALDING,
Speaker Lower House of the Common Council.

Approved Sept. 27, 1906.

H. M. BEARDSLEY,
Mayor.

Attest:

[SEAL.] WM. CLOUGH,
City Clerk,

By E. H. ALLEN,
Dpy.

74-36 STATE OF MISSOURI,
County of Jackson,
Kansas City, ss:

I, Wm. Clough City Clerk of Kansas City, Missouri, hereby certify that the annexed and foregoing is a true and correct copy of an ordinance of said City, No. 33887 entitled: "An ordinance Authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants," approved September 27, 1906, as the same appears of record and on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of Kansas City aforesaid, this 5th day of Oct. A. D. 1906.

[SEAL.]

WM. CLOUGH,
City Clerk,

By E. H. ALLEN,
Deputy.

That Ordinance No. 33887 of Kansas City, Missouri, referred to in paragraph (2) of said stipulation is the ordinance attached to the contract set forth in the last preceding paragraph.

IV.

The order of court, Exhibit A attached to said stipulation, omitting title and formal parts, is as follows:

76

Order.

1. It is ordered by the Court that the Receiver and the distributing companies be and are hereby authorized to establish and put into force and effect in the several cities hereinafter named, the following schedule of minimum net rates to the consumer recommended by the Receiver for the sale of natural gas through the distributing companies in the several cities of Kansas and Missouri, to-wit:

76-1

Name of city.	Name of distributor.	Net rate to con- sumer per thousand cubic feet.
St. Joseph, Missouri.....	St. Joseph Gas Company.....	60
Weston, Missouri.....	Weston Gas Company.....	60
Atchison, Kansas.....	Atchison G. L. & P. Co.....	60
Leavenworth, Kansas....	Leavenworth L. H. & P. Co....	60
Tonganoxie, Kansas.....	Tonganoxie G. & E. Co.....	60
Lawrence, Kansas.....	Citizens L. H. & P. Co.....	60
Topeka, Kansas.....	Consumers L. H. & P. Co.....	60
Baldwin, Kansas.....	Baldwin Gas Co.....	60
Kansas City, Mo.....	Kansas City Gas Co.....	60
Kansas City, Kansas....	Wyandotte Co. Gas Co.....	60
Merriam, Kansas.....	Johnson County Gas Co.....	60
Lenexa, Kansas.....	Johnson County Gas Co.....	60
Olathe, Kansas.....	Olathe Gas Co.....	60
Gardner, Kansas.....	Gardner Gas Co.....	60
Edgerton, Kansas.....	Edgerton Gas Co.....	60
Wellsville, Kansas.....	Wellsville Gas Co.....	60
Ottawa, Kansas.....	Ottawa Gas & Elec. Co.....	60
Princeton, Kansas.....	Princeton & Richmond Gas Co..	60
Richmond, Kansas.....	Princeton & Richmond Gas Co..	60
Welda, Kansas.....	Anderson County Gas Co.....	60
Colony, Kansas.....	Anderson County Gas Co.....	60
Bronson, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co.	60
Moran, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co.	60
Ft. Scott, Kansas.....	Ft. Scott G. & E. Company....	60
Deerfield, Missouri.....	Ft. Scott & Nevada L. H. W. & P. Co.	60
Nevada, Missouri.....	Ft. Scott & Nevada L. H. W. & P. Co.	60
Thayer, Kansas.....	Thayer Gas Co.....	50

Name of city.	Name of distributor.	Net rate to con- sumer per thousand cubic feet.
Liberty, Kansas.....	Liberty Gas Company.....	50
Altamont, Kansas.....	American Gas Co.....	50
Oswego, Kansas.....	American Gas Co.....	50
Columbus, Kansas.....	American Gas Co.....	50
Scammon, Kansas.....	American Gas Co.....	50
Cherokee, Kansas.....	American Gas Co.....	50
Weir City, Kansas.....	Weir Gas Co.....	50
Pittsburg, Kansas.....	Home L. H. P. Co.....	50
Galena, Kansas.....	American Gas Co.....	50
Carl Junction, Mo.....	Carl Junction Gas Co.....	50

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Oronogo, Mo.....	Oronogo Gas Co.....	50
Joplin, Mo.....	Joplin Gas Co.....	50
Jasper County, Mo.....	Kansas Natural Gas Co.....	50
Independence, Kansas...	Kansas Natural Gas Co.....	30
Coffeyville, Kansas.....	Coffeyville Gas & Fuel Co.....	30
Elk City, Kansas.....	Elk City Oil & Gas Co.....	30
Parsons, Kansas.....	Parsons Natural Gas Co.....	35

County consumers served direct from the lines of the Receiver to be charged the same rates for gas as herein provided for consumers in the city situated nearest to them.

2. The foregoing net rates are not maximum rates and are authorized without prejudice to the rights of the distributing companies to establish, collect and receive any greater or more compensatory rates than those herein mentioned if the same can be done by agreement with the cities or otherwise, but the Receiver shall charge and collect as compensation for such gas so sold by such distributing company at such greater rate, a price equal to the below named percentage of the rate applicable to such distributing company herein above specified and authorized.

3. The Receiver and distributor shall charge and collect from each consumer a minimum bill of fifty cents (50c). The settlements between the Receiver and the distributing companies shall be made on or before the 15th day of the month. The receiver shall receive of the proceeds of the sale of gas and of the minimum bill and forfeited discounts, 57½%; and the distributing companies shall receive 42½%, except in St. Joseph, Missouri, where the Receiver shall receive fifty per cent (50%) thereof, and St. Joseph Gas Company, 50%; and the division of the proceeds of gas

76-3 sales at Fort Scott, Kansas, shall be as heretofore obtaining, to-wit: 50% to the Receiver; 25% to the Fort Scott and Nevada Light, Heat, Water and Power Company; 25% to the Fort Scott Gas & Electric Company; and at other cities on the Gunn Pipe Line the division shall be: 50% to the Receiver and 50% to the

Fort Scott and Nevada Light, Heat, Water and Power Company. In the event of failure of a consumer to pay for the gas furnished him as herein authorized, the Receiver and distributing companies shall discontinue the service to such consumer, after notice. Should the distributing company fail to make settlement promptly as directed, the Receiver may discontinue the service to such company. The Receiver and distributing companies are authorized to charge for the gas consumed by each consumer at a rate of 10% in excess of the net rate to the consumer on all bills not paid within ten days after due.

4. That if at any time it becomes necessary to supply gas on peak-load days or otherwise from the main trunk line or from wells now furnishing gas to the main trunk line or then capable of doing so, operated by the Receiver, to any of the distributing companies or cities above named which are selling gas at less than 50c. per thousand cubic feet, then and in that event the Receiver and distributing companies distributing gas in said city shall charge 75 cents net per thousand cubic feet for all gas furnished from the trunk line and distributed and sold in said city.

5. That the Receiver and all distributing companies discontinue the sale of all gas for use under boilers to make steam for power purposes, for use in brick plants, cement plants, glass plants, smelters and oil refineries after September 1st, 1917, until the further order of the Court.

76-4 6. The foregoing rates and the division thereof above provided for shall take effect and be in force for all gas sold and distributed by the distributing companies from and after special meter readings to be made by the distributing companies from September 1st to 10th, 1917, until further order of the Court.

7. That the Receiver uniformly apportion the gas to and among the various distributing companies supplied by him on the percentage basis of the number of meters in service in each city compared with the total number of meters in service supplied with gas from the Receiver's main pipe-line system from time to time.

8. It is further ordered that the Receiver shall maintain at the gates of the distributing companies' plants in each city and at the gates of the Gunn Pipe Line approved meters in good repair and shall carefully measure all gas delivered to each distributing company, and shall keep an accurate check on all gas sales reported by the distributor in order to ascertain the extent of leakage of gas. And if leakage exists in excess of the rate of 150,000 cubic feet per mile of three-inch main per year, in any distributing company's plant, or in said Gunn Pipe Line, he shall notify such company to repair its lines and reduce said excessive leakage, and if such company fail to reduce such leakage, he shall make application to the Court for an order in the premises, giving said distributing Company or said Gunn Pipe Line notice of the time when said application will be made.

9. It is suggested that each distributing company take immediate steps to inventory its plant with a view to having a valuation made thereof by a master to be appointed by the Court as one of 76-5 the bases for future changes in the schedule of rates herein.

10. The Intervenor herein, the Kansas City Pipe Line Company, and the Kansas City Gas Company and Wyandotte County Gas Company, appearing specially for this purpose only, object to the foregoing orders and each and all of them, and particularly the order fixing said 60c. rate and apportioning the same as aforesaid. Leave is hereby given to Kansas City, Missouri to make a special appearance in these causes for the purpose of objecting and excepting to this order. Pursuant to such leave, Kansas City, Missouri, now specially appears herein and objects and excepts to this order on the ground that its rights and interests are thereby adjudicated and determined adversely to it without due process of law in violation of the Constitution of the United States, and especially of Article 5 of the Amendments to the Constitution, which objections were by the Court overruled, to which ruling said parties except. Exceptions will be allowed to each of the Missouri defendants and each of the defendant cities in Kansas and the Public Utilities Commission of Kansas and any other party adversely affected by these rates.

WILBUR F. BOOTH,
Judge.

Filed Aug. 13, 1917.

77 V.

The order of court, Exhibit B attached to said stipulation, omitting title and formal parts, is as follows:

77-1 *Order.*

1. That the Receiver and the distributing companies be, and are hereby, authorized to establish and put into force and effect in the several cities hereinafter named, the following schedule of minimum net rates to the consumer for the sale of natural gas through the distributing companies in the several cities of Kansas and Missouri, to-wit:

77-2

Name of city.	Name of distributor.	Net rate to consumer per thousand cu. ft.
St. Joseph, Missouri.....	St Joseph Gas Company.....	80
Weston, Missouri.....	Weston Gas Company.....	80
Atchison, Kansas.....	Atchison Ry. L. & P. Co.....	80
Leavenworth, Kansas.....	Leavenworth L. H. & P. Co.....	80
Tonganoxie, Kansas.....	Tonganoxie G. & E. Co.....	80

Name of city.	Name of distributor.	Net rate to consumer per thousand cu. ft.
Lawrence, Kansas.....	Citizens L. H. & P. Co.....	80
Topeka, Kansas.....	Consumers L. H. & P. Co.....	80
Baldwin, Kansas.....	Baldwin Gas Company.....	80
Kansas City, Missouri...	Kansas City Gas Company.....	80
Kansas City, Kansas....	Wyandotte County Gas Co.....	80
Merriam, Kansas.....	Johnson County Gas Co.....	80
Lenexa, Kansas.....	Johnson County Gas Co.....	80
Olathe, Kansas.....	Olathe Gas Company.....	80
Gardner, Kansas.....	Gardner Gas Company.....	80
Edgerton, Kansas.....	Edgerton Gas Company.....	80
Wellsville, Kansas.....	Wellsville Gas Company.....	80
Ottawa, Kansas.....	Ottawa Gas & Electric Company.	80
Princeton, Kansas.....	Princeton & Richmond Gas Co..	80
Richmond, Kansas.....	Princeton & Richmond Gas Co..	80
Welda, Kansas.....	Anderson County Gas Company.	80
Colony, Kansas.....	Anderson County Gas Company.	80
Bronson, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co.	80
Moran, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co.	80
Ft. Scott, Kansas.....	Ft. Scott Gas & Electric Co....	80
Deerfield, Missouri.....	Ft. Scott & Nevada L. H. W. & P. Co.	80
Nevada, Missouri.....	Ft. Scott & Nevada L. H. W. & P. Co.	80
Thayer, Kansas.....	Thayer Gas Company.....	70
Liberty, Kansas.....	Liberty Gas Company.....	70
Altamont, Kansas.....	American Gas Company.....	70
Oswego, Kansas.....	American Gas Company.....	70
Columbus, Kansas.....	American Gas Company.....	70
Scammon, Kansas.....	American Gas Company.....	70
Cherokee, Kansas.....	American Gas Company.....	70
Weir City, Kansas.....	Weir Gas Company.....	70
Pittsburg, Kansas.....	Home Light, Heat & Power Co..	70
Galena, Kansas.....	American Gas Company.....	70
Carl Junction, Missouri..	Carl Junction Gas Co.....	70
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Oronogo, Missouri.....	Oronogo Gas Company.....	70
Joplin, Missouri.....	Joplin Gas Company.....	70
Jasper County, Mo.....	Kansas Natural Gas Company...	70
Independence, Kansas...	Kansas Natural Gas Company...	35
Coffeyville, Kansas.....	Coffeyville Gas & Fuel Co.....	35
Elk City, Kansas.....	Elk City Oil & Gas Company...	35
Parsons, Kansas.....	Parsons Gas Company.....	40

Country consumers served direct from the lines of the Receiver to be charged the same rates for gas as herein provided for consumers in the city situated nearest to them.

2. The foregoing net rates are not maximum rates and are authorized without prejudice to the rights of the distributing companies to establish, collect and receive any greater or more compensatory rates than those herein mentioned if the same can be done by agreement with the cities, but the Receiver shall charge and collect as compensation for such gas so sold by such distributing company at such greater rate, a price equal to the below named percentage of the rate applicable to such distributing company hereinabove specified and authorized.

3. The Receiver and distributor shall charge and collect from each consumer a minimum bill of fifty cents (50c.). The settlements between the Receiver and the distributing companies shall be made on or before the 15th day of the month. The Receiver shall receive of the proceeds of the sale of gas and of the minimum bill and forfeited discounts, 40%, and the distributing companies shall receive 60% except that the division of the proceeds of gas sales at Fort Scott, Kansas, shall be as heretofore obtaining, to-wit; 50% to the Receiver; 25% to the Fort Scott & Nevada Light, Heat, Water & Power Company; 25% to the Fort Scott Gas & Electric Company; and at other cities on the Gunn Pipe Line the division shall be: 50% to the Receiver and 50% to the Fort Scott & Nevada Light, Heat, Water & Power Company. At Independence, Coffeyville, Elk City, and Parsons, the present division shall remain, viz: 57½% to the Receiver, and 42½% to the distributing company. In the event of failure of the consumer to pay for the gas furnished him as herein authorized, the Receiver and distributing companies shall discontinue the service to such consumer, after notice. Should the distributing company fail to make settlement promptly as directed, the Receiver may discontinue the service to such company. The Receiver and distributing companies are authorized to charge for the gas consumed by each consumer at a rate of 10% in excess of the net rate to the consumer on all bills not paid within ten days after due.

4. That if at any time it becomes necessary to supply gas on peak-load days or otherwise from the main trunk line or from wells furnishing gas to the Main trunk line, operated by the Receiver, to any of the distributing companies or cities above named which are selling gas at less than 70c. per thousand cubic feet, then and in that event the Receiver and distributing companies distributing gas in said city shall charge 85c. net per thousand cubic feet for all gas furnished from the trunk line and distributed and sold in said city.

5. Except as authorized by special order, neither the Receiver nor any distributing company shall sell gas for use under boilers to make steam for power purposes, for use in brick plants, cement plants, glass plants, smelters, or oil refineries.

6. The foregoing rates and the division thereof above provided for shall take effect and be in force for all gas sold and distributed by the distributing companies from and after November, 1918, meter readings, except at Kansas City, Mo., where they shall become effective from and after meter readings made on or after November 20, 1918.

77-5 7. That the Receiver uniformly apportion the gas to and among the various distributing companies supplied by him on the percentage basis of the number of meters in service in each city compared with the total number of meters in service supplied with gas from the Receiver's main pipe-line system from time to time.

8. That the Receiver shall maintain at the gates of the distributing companies' plants in each city and at the gates of the Gunn Pipe Line approved meters in good repair, and shall carefully measure all gas delivered to each distributing company, and shall keep an accurate check on all gas sales reported by the distributor in order to ascertain the extent of leakage of gas.

9. This order, so far as it authorizes an increase of rates and a new percentage of division, is not mandatory upon the distributing companies, but is optional with each company. If the option is availed of by any company such action by it will be understood to be subject to the following conditions, to-wit: If it shall be finally determined judicially that consumers on the system of any distributing company are entitled to a refund of the whole or any part of this present increase of rates, such refund shall be borne by the respective distributing company and by the Receiver in the same proportion as they share, respectively, in the present increase of rates; and if the whole present increase is absorbed by the distributing company, said company shall bear the whole of any such refund.

10. Exceptions will be allowed to this order to any party to this suit adversely affected hereby.

(Signed)

WILBUR F. BOOTH,
Judge.

Dated, November 13, 1918.

78

VI.

The order of court, Exhibit C attached to said stipulation, omitting title and formal parts, is as follows:

79 Whereas, an order of this court, known as the Zone Rate Order, was made and entered herein July 14, 1919, approving certain rates to be charged by the Receiver of the Kansas Natural Gas Company for natural gas delivered by him to the various distributing companies at the gates of their respective cities; and it now appearing to the court that certain of the distributing companies, availing themselves of the provision of said order, have by formal application and otherwise, petitioned for the vacation or

modification of said order for reasons set forth at length in said applications; and it appearing further that the Public Utilities Commission of Kansas is at this time engaged in an investigation and inquiry touching the reasonableness of the rates now being charged or to be charged by said distributing companies to the consumers, and that one of the necessary elements of said rates is the amount paid or to be paid by said distributing companies to the Receiver for the supply of gas.

Now, therefore, for the purpose of affording to all parties interested an open inquiry as to what are reasonable city gate rates to be charged by the Receiver to the several distributing companies for gas furnished; and in the hope that such inquiry may be an aid both to said Public Utilities Commission of Kansas and to said distributing companies in their said investigation, but without
80 being binding upon them, it is hereby,

Ordered: That a hearing be had before a Special Master to be appointed by the court covering matters (to be more particularly specified in the order of appointment) touching the question of reasonable rates to be charged by the Receiver to said distributing companies for gas furnished them at their respective city gates. And in view of the representations of certain of said distributing companies that it is not possible for them (while upon the basis of the rates now being charged by them to their consumers) to pay to the Receiver the rates specified in said order of July 14th, 1919: it is further,

Ordered: That said order of July 14th, 1919, be and the same is hereby temporarily suspended during the said inquiry and investigation by said Public Utilities Commission of Kansas, and said hearing above mentioned before the Special Master, or until the further order of this court; and in lieu of the rates provided in said order of July 14, 1919, the following temporary schedule of net rates will be charged by the Receiver for natural gas delivered into the plants of the respective distributing companies at the measuring stations located at the connection between the distributing plant and the pipe line system operated by the Receiver, which are classified into Zones as follows:

	Price per Mc. ft.
Zone 1. Field Lines and Towns, applying to Independence, Coffeyville, Elk City and Parsons, Kansas.....	.20
Zone 2. Southern Trunk, applying to Liberty, Altamont, Oswego, Columbus, Scammon, Cherokee, Weir City, Pittsburg, Galena, in Kansas, and Carl Junction, Oronogo, Joplin and Jasper County, in Missouri.....	.26
Zone 3. Northern Trunk and Branches, applying to Thayer, Colony, Welda, Richmond, Princeton, Ottawa, Baldwin, Lawrence, Topeka, Tonganoxie, Reno, Leavenworth, Atchison, Le Loup, Wellsville, Edgerton, Gardner, Olathe, Lenexa, Merriam and Kansas City in Kansas, and Kansas City Mo. . .	.28

81 All gas to be measured on an eight (8) ounce basis, and on a temperature basis of 50 degrees Fahrenheit.

Country consumers served direct from the lines of the Receiver to be charged the same rates for gas as are charged city consumers in the city situated nearest to them. WILBUR F. BOOTH,

Judge.

Dated this 5th day of August, 1919.

82

VII.

Exhibit D to said stipulation of facts in evidence is as follows:

83

Office of John M. Landon,

Managing Receiver for Kansas Natural Gas Company.

Schedule of Rates for Sale of Gas by the Receiver of Kansas Natural Gas Company to Distributing Companies.

To all distributing companies supplying natural gas to all cities named below:

You will take notice that from and after the average meter reading date in August, 1919, and until further notice, the following schedule of net rates will be charged for natural gas delivered into the plants of the respective distributing companies at the measuring stations located at the connection between the distributing plant and the Pipe Line system operated by the Receiver, which are classified into zones as follows:

	Price per M cu.ft.
Zone 1. Field Lines and Towns, applying to Independence, Coffeyville, Elk City and Parsons, Kansas.....	.20
Zone 2. Southern Trunk, applying to Liberty, Altamont, Oswego, Columbus, Scammon, Cherokee, Weir City, Pittsburg, Galena, in Kansas, and Carl Junction, Oronogo, Joplin and Jasper County, in Missouri.....	.33
Zone 3. Northern Trunk and Branches, applying to Thayer, Colony, Welda, Richmond, Princeton, Ottawa, Baldwin, Lawrence, Topeka, Tonganozie, Reno, Leavenworth, Atheison, LeLoup, Wellsville, Edgerton, Gardner, Olathe, Lenexa, Merriam and Kansas City in Kansas and Kansas City, Mo. . .	.35

All Gas to be measured on an eight (8) ounce basis.

Country consumers served direct from the lines of the Receiver to be charged the same rates for gas as are charged city consumers in the city situated nearest to them.

Dated at Independence, Kansas, this 14th day of July, 1919.

JOHN M. LANDON,

Managing Receiver for Kansas Natural Gas Company.

84 The foregoing schedule having been presented to the court for approval, the same is hereby approved. However, at any time prior to July 25th, 1919, the court will receive suggestions in writing from interested parties. If good reasons appear for modifying this order, modification will be made. It is not feasible to have oral hearings.

WILBUR F. BOOTH,

Judge.

July 14th, 1919.

85

VIII.

Exhibit E to said stipulation of facts in evidence, omitting endorsements, is as follows:

86

Copy.

Filed 1-23-20.

354 Reinstated.

United States District Court, District of Kansas, First Division.

No. 1-N.

THE FIDELITY TITLE & TRUST COMPANY, Plaintiff,

vs.

KANSAS NATURAL GAS COMPANY et al., Defendants.

Consolidated with No. 1351, Equity.

There came regularly on for hearing on the 13th of October, 1919, a petition by John M. Landon, Receiver of the Kansas Natural Gas Company, praying for an order reinstating the order heretofore made on the 14th day of July, 1919, fixing a schedule of rates to be charged by the Receiver for the sale of gas delivered to the several distributing companies furnished by him at the respective city gates, which order of July 14th, 1919, was temporarily suspended by an order made August 5th, 1919. Said Receiver appeared in person, and by his attorneys, Chester I. Long, Esq., John H. Atwood, Esq., Robert Stone, Esq., and T. S. Salathiel, Esq., and certain of the distributing companies appeared by their attorneys, among them Kansas City Gas Company, Wyandotte County Gas Company, and Citizens' Light & Power Company, of Lawrence, by J. W. Dana, Esq., L. G. Treleaven, Receiver for Consumers Light, Heat & Power Company, of Topeka, Kansas, by F. L. Doran, Esq., and Atchison Railway Light, Heat & Power Company, by J. N. Challis, Esq.

Evidence was introduced and the matter held in abeyance pending the furnishing of certain items of evidence called for by the Distributing Companies. Said items of evidence were thereafter

furnished. A brief has also been submitted on behalf of the following Distributing Companies: Kansas City Gas Company, 87 Wyandotte County Gas Company; Treleaven, Receiver, Consumers' Light, Heat & Power Company; Atchison Railway Light & Power Company, Leavenworth Light, Heat & Power Company.

And the Court having considered the files and records and evidence bearing upon said matter, together with the arguments of counsel, hereby,

Orders, That the schedule of rates known as the 35-cent Zone Rate Order, made on the 14th of July, 1919, but which was temporarily suspended by an order made on the 5th of August, 1919, known as the 28-cent Zone Rate Order, is hereby reinstated and restored, to take effect on the 25th of March, 1920.

Ordered further, That the Receiver forthwith notify the various distributing companies served by him, by sending to each of them a notice in the form attached to this order.

WILBUR F. BOOTH,
Judge.

88 Office of John M. Landon, Managing Receiver for Kansas Natural Gas Company.

Schedule of Rates for Sale of Gas by the Receiver of Kansas Natural Gas Company to Distributing Companies.

To all distributing companies supplying natural gas to all cities named below:

You will take notice that from and after March 25th, 1920, and until further notice, the following schedule of net rates will be charged for natural gas delivered into the plants of the respective distributing companies at the measuring stations located at the connection between the distributing plant and the Pipe Line system operated by the Receiver, which are classified into zones as follows:

M cu. ft.

Zone 1. Field lines and towns, applying to Independence, Coffeyville, Parsons, and Tyro, Kansas.....	.20
Zone 2. Southern Trunk, applying to Liberty, Altamont, Oswego, Columbus, Scammon, Cherokee, Weir City, Pittsburg, Galena, in Kansas, and Carl Junction, Oronogo, Joplin and Jasper County in Missouri.....	.33
Zone 3. Northern Trunk and branches, applying to Thayer, Colony, Princeton, Welda, Richmond, Ottawa, Baldwin, Lawrence, Topeka, Tonganoxie, Reno, Leavenworth, Atchison, Leloup, Wellsville, Edgerton, Gardner, Olathe, Lenexa, Merriam, Fort Scott, Moran, Bronson, and Kansas City in Kansas, and Nevada, Deerfield and Kansas City, Mo. .	.35

All Gas to be measured on an eight (8) ounce basis, and on temperature basis of 60 deg. F.

Country consumers served direct from the lines of the Receiver to be charged the same rates for gas as are charged city consumers in the city situated nearest to them.

Dated at Independence, Kansas, this 20th day of January, 1920.

JOHN M. LANDON,

Managing Receiver for Kansas Natural Gas Company.

Approved:

WILBUR F. BOOTH,

Judge.

January 20th, 1920.

89

IX.

Exhibit F to said stipulation is as follows:

89-1 United States District Court, District of Kansas, First Division.

JOHN M. LANDON and GEORGE F. SHARITT, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE COURT OF INDUSTRIAL RELATIONS of the STATE OF KANSAS et al., Defendants.

JOHN M. LANDON and GEORGE F. SHARITT, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE COURT OF INDUSTRIAL RELATIONS of the STATE OF KANSAS (Substituted for the Public Utilities Commission of the State of Kansas); W. L. Huggins, Clyde M. Reed, and George H. Wark, as Members of the Court of Industrial Relations (Substituted for W. L. Huggins, C. W. Green, and John M. Kinkel, as Members of the Public Utilities Commission of the State of Kansas); Fred S. Jackson, as Attorney for the Public Utilities Commission of the State of Kansas; Richard J. Hopkins, as Attorney-General of the State of Kansas; Frank W. McAllister, as Attorney-General of the State of Missouri; Zach D. Patterson, as Counsel

89-2 of the Public Service Commission of the State of Missouri; William G. Busby, David E. Blair, Noah W. Simpson, Edward Flad, and Edwin J. Bean, as The Public Service Commission of the State of Missouri; Fidelity Title & Trust Company, a Corporation; Fidelity Trust Company, a Corporation; Delaware Trust Company, a Corporation; Kansas City Pipe Line Company, a Corporation; Kansas Natural Gas Company (Distributing Companies); St. Joseph Gas Company; The Union Gas and Traction Company; The Atchison Railway, Light and Power Company;

The Leavenworth Light, Heat and Power Company; The Tonganoxie Gas and Electric Company; The Citizens Light, Heat & Power Company; The Consumer's Light, Heat & Power Company; L. G. Treleven, Receiver, The Consumer's Light, Heat and Power Company; Kansas City Gas Company; The Wyandotte County Gas Company; The Olathe Gas Company; The Ottawa Gas and Electric Company; The Parsons Natural Gas Company; The Parsons Gas Company; The Elk City Oil and Gas Company; The American Gas Company; The Home Light, Heat and Power Company; The Carl Junction Gas Company; The Oronogo Gas Company; The Joplin Gas Company; The Weir Gas Company; Johnson County Gas Company; Wells-ville Gas Company; Weston Gas & Light Company; The Farmers Gas Company; Liberty Gas Company; The Kansas Gas & Electric Company; The Ft. Scott & Nevada Light, Heat, Water & Power Company; The Ft. Scott Gas & Electric Company, and John C. Cannon, Receiver of the Ft. Scott Gas & Electric Co.; The Coffeyville Gas & Fuel Company; The Kansas Farmers Gas Company; The Edgerton Gas Company; The Gardner Gas Company; The Baldwin Gas Company; The Ottawa Gas & Electric Company; The Richmond & Princeton Gas Company; The Anderson County Light & Heat Company; (Cities): St. Joseph, Missouri; Weston, Missouri; Atchison, Kansas; Leavenworth, Kansas; LeLoup, Kansas; Rosedale, Kansas; Bronson, Kansas; Moran, Kansas; Tonganoxie, Kansas; Topeka, Kansas; Lawrence, Kansas; Baldwin, Kansas; Ottawa, Kansas; Kansas City, Missouri; Kansas City, Kansas; Merriam, Kansas; Shawnee, Kansas; Lenexa, Kansas; Olathe, Kansas; Gardner, Kansas; Edgerton, Kansas; Wellsville, Kansas; Princeton, Kansas; Scipio, Kansas; Richmond, Kansas; Welda, Kansas; Colony, Kansas; Oakland, Kansas; Empire City, Kansas; Fort Scott, Kansas; Deerfield, Missouri; Nevada, Missouri; Thayer, Kansas; Parsons, Kansas; Elk City, Kansas; Independence, Kansas; Coffeyville, Kansas; Liberty, Kansas; Altamont, Kansas; Oswego, Kansas; Columbus, Kansas; Seammon, Kansas; Weir City, Kansas; Cherokee, Kansas; Galena, Kansas; Pittsburg, Kansas; Carl Junction, Missouri; Oronogo, Missouri; Joplin, Missouri; Defendants.

89-4

Decree.

This cause came on to be further heard at this term and it was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

First.

That those certain parties who brought suits in their individual behalf against The Kansas City Gas Company, claiming that said company has at certain specified times charged more than a legal and more than a reasonable price for gas, and praying for the fixing

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of legal and reasonable charges, for an accounting in reference to excessive charges and for an injunction against charging excessive rates, are not necessary parties to the present suit; their interest being represented either by the City of Kansas City or by the Public Service Commission of Missouri, and the motion of Kansas City Gas Company and the Receivers, to make them parties to this suit is denied. On motion of plaintiffs, this cause is dismissed as to the defendant Marnet Mining Company.

Second.

That the City of Kansas City, Missouri, is a proper party to the present suit, and its motion to dismiss is denied.

89-5

Third.

That the motion of the Court of Industrial Relations of the State of Kansas to dismiss this suit as to the distributing companies and not allow a hearing to said companies concerning the confiscatory character of the 28-cent rate order is denied.

Fourth.

That the rates in force on January 1, 1911, under Section 30 Chapter 238, Laws of Kansas 1911, for the sale of natural gas by the defendants distributing companies to consumers in the following places and at the prices named below:

Kansas Natural Gas Company, Independence, Kansas, 20 cents,
Elk City Oil & Gas Company, Elk City, Kansas, 25 cents,
The Coffeyville Gas & Fuel Company, Coffeyville, Kansas, 20 cents,

The Liberty Gas Company, Liberty, Kansas, 25 cents,
The American Gas Company, Altamont, Kansas, 25 cents,
The American Gas Company, Oswego, Kansas, 25 cents,
The American Gas Company, Columbus, Kansas, 25 cents,
The American Gas Company, Scammon, Kansas, 25 cents,
The American Gas Company, Galena and Empire, Kansas, 25 cents,

89-6 The American Gas Company, Cherokee, Kansas, 25 cents,
The Home Light, Heat and Power Company, (Kansas Gas & Electric Company, Lessee), Pittsburg, Kansas, 25 cents,
Parsons Natural Gas Company, Parsons, Kansas, 25 cents,
The Parsons Gas Company, Parsons, Kansas, 25 cents,
The Anderson County Light and Heat Company, Colony and Welda, Kansas, 25 cents,

The Richmond and Princeton Gas Company, Richmond and Princeton, Kansas, 25 cents,
The Ottawa Gas & Electric Company, Ottawa, Kansas, 25 cents,
The Baldwin Gas Company, Baldwin, Kansas, 25 cents,
The Citizens Light, Heat and Power Company, Lawrence, Kansas, 25 cents,

The Consumers Light, Heat & Power Company, (L. G. Treleaven, Receiver), Topeka and Oakland, Kansas, 25 cents,

The Tonganoxie Gas & Electric Company, Tonganoxie, Kansas, 25 cents,

Leavenworth Light, Heat & Power Company, Leavenworth, Kansas, 25 cents,

The Atchison Railway Light & Power Company, Atchison, Kansas, 25 cents,

The Edgerton Gas Company, Edgerton, Kansas, 25 cents,

Wellsville Gas Company, Wellsville, Kansas, 25 cents, LeLoup,

Kansas, 25 cents,

The Gardner Gas Company, Gardner, Kansas, 25 cents,

The Johnson County Gas Company, Merriam, Kansas, Shawnee, Kansas, Lenexa, Kansas, 25 cents,

89-7 Kansas Farmers Gas Company, Rural, 25 cents,

The Wyandotte County Gas Company, Kansas City, Kansas, 25 cents,

The Weir Gas Company, Weir, Kansas, 25 cents,

The Olathe Gas Company, Olathe, Kansas, 25 cents,

Ft. Scott Gas & Electric Co., Ft. Scott, Kansas, 30 cents,

Ft. Scott & Nevada Light, Heat, Water & Power Company, Moran, Kansas, Bronson, Kansas, 30 cents;

were, on December 10th, 1915, and thereafter, and still are, non-compensatory, unreasonably low, confiscatory and violative of the first clause of the Fourteenth Amendment to the Constitution of the United States.

Fifth.

That the proportional part of said rates being paid by said distributing companies to the Receiver of the Kansas Natural Gas Company on January 1, 1911, and subsequent thereto was non-compensatory to the Receiver and did not furnish the said Receiver a fair and reasonable return upon the property in his charge used and useful in furnishing said gas to said distributing companies.

Sixth.

That the order of December 10, 1915, of the Public Utilities Commission of Kansas prescribing rates for the sale of natural gas by the defendant distributing companies to consumers of gas in Kansas known as the "28-cent Rate Order" and the rates thereunder, 89-8 were on said date and still are, as to said distributing companies, non-compensatory, unreasonably low, confiscatory and violative of the Constitution of the United States.

Seventh.

That the proportional part of the rates prescribed by the 28-cent Rate Order, which was paid by said distributing companies to the Receiver of the Kansas Natural Gas Company during the time

said rate schedule was in force, was non-compensatory to the Receiver, did not furnish the said Receiver a fair and reasonable return upon the property in his charge and used and useful in furnishing said gas to said distributing companies, was confiscatory and violative of the Constitution of the United States.

Eighth.

That the preliminary injunction which issued out of this Court heretofore and on the 1st day of August, 1916, restraining and enjoining the Public Utilities Commission of Kansas and its members and its attorney, and the Attorney-General of the State of Kansas, from enforcing the statutory rates provided by Section 30, Chapter 238, Laws of Kansas, 1911 and from enforcing the rates provided by the order of the Public Utilities Commission of Kansas of December 10, 1915, known as the 28-cent Rate Order and from enforcing any of the penal provisions of the laws of Kansas for failure to maintain in effect such rates, or any of them, was properly, legally and providently issued and is made permanent.

Ninth.

That the following supply contracts under which gas was being supplied prior to the receivership herein by Kansas Natural Gas Company to the distributing companies, to-wit:

Contract between Kansas Natural Gas Company and Joseph J. Heim and Arnold Kalman, dated January 5, 1905, for a supply of gas for the cities of Topeka and Oakland, Kansas, now held by the Consumers Light Heat and Power Company, L. G. Treleven, Receiver;

Contract between Kansas Natural Gas Company and John A. Lambing and Otto Gerner, dated March 10, 1905, for a supply of gas for the towns of Altamont, Oswego, Columbus, Galena, Empire, Seamon and Cherokee, in the State of Kansas, and now held by the American Gas Company;

Contract between Kansas Natural Gas Company and Joseph J. Heim and Arnold Kalman, dated January 5, 1905, for a supply of gas for the city of Lawrence now held by the Citizens Light, Heat and Power Company;

Contract between Kansas Natural Gas Company and Morris Cliggett, Trustee, dated February 18, 1905, for a supply of gas for the City of Pittsburgh, Kansas now held by the Home Light, Heat and Power Company and Kansas Gas and Electric Company;

Contract between Kansas Natural Gas Company and the Weir Gas Company, dated February 18, 1905, for a supply of gas for Weir, Kansas, in which the Union Gas and Traction Company has an interest;

Contract between Kansas Natural Gas Company and C. H. Patterson, dated July 10, 1905, for a supply of gas for the City of Baldwin, Kansas, now held by the Baldwin Gas Company;

Contract between Kansas Natural Gas Company and C. H. Pattison, dated February 1, 1906, for a supply of gas for the City of Colony, Kansas, and contract between Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, for a supply of gas for Welda, Kansas, said contracts now held by the Anderson County Light and Heat Company;

Contract between Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, for a supply of gas to the City of Richmond, Kansas, and a contract between Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, for a supply of gas for Princeton, Kansas, said contracts now held by the Richmond and Princeton Gas Company.

Contract between Kansas Natural Gas Company and C. H. Pattison dated February 1, 1906, for a supply of gas for the Cities of Merriam, Shawnee and Lenexa, Kansas, said contract now held by the Johnson County Gas Company;

Contract between Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, for a supply of gas to the City
89-11 of Edgerton, said contract now held by Edgerton Gas Company, and a contract between the same parties of the same date for a supply of gas for the Cities of Wellsville and Le Loup, Kansas, said contracts now held by the Wellsville Gas Company;

Contract between Kansas Natural Gas Company and the Kansas Farmers Gas Company, dated January 16, 1911, for a supply of gas to rural communities in Douglas, Johnson and Franklin Counties, Kansas;

Contract between Kansas Natural Gas Company and the Leavenworth Light and Heat Company, dated May 16, 1905, for a supply of gas to the City of Leavenworth, Kansas, now held by the Leavenworth Light, Heat and Power Company;

Contract between Kansas Natural Gas Company and C. H. Pattison, dated September 30, 1905, for a supply of gas to the City of Ottawa, Kansas, now held by the Ottawa Gas and Electric Company;

Contract between Kansas Natural Gas Company and C. H. Pattison, dated November 2, 1905, for a supply of gas to Tonganoxie, Kansas, now held by the Tonganoxie Gas and Electric Company.

Contract between Kansas Natural Gas Company and C. H. Pattison, dated July 12, 1905, for a supply of gas to Atchison, Kansas, now held by the Atchison Railway Light and Power Company;

Contract between the Peoples Gas Company and The Coffeyville Gas & Fuel Company, dated August 14, 1905, for a supply of gas to the City of Coffeyville, Kansas;

Contract between T. N. Barnsdall and the National Gas,
89-12 Electric Light and Power Company, dated January 19, 1905, for a supply of gas to the City of Joplin, Missouri, now held by the Joplin Gas Company;

Contract between the Kaw Gas Company and C. H. Pattison, dated February 1, 1906, for a supply of gas to the City of Weston, Missouri, now held by the Weston Gas and Light Company;

Contract between Kansas Natural Gas Company and C. H. Patti-

son, dated June 27, 1905, for a supply of gas to Gardner, Kansas, now held by the Gardner Gas Company;

Contract between Prairie Oil & Gas Company and O. A. Evans and Company, dated November 4, 1905, for a supply of gas to Thayer, Kansas, now held by the Baxter Springs Gas Company and assumed by Kansas Natural Gas Company;

Contract between Kansas Natural Gas Company and Liberty Gas Company, dated October 12, 1909, for a supply of gas to Liberty, Kansas;

Contract between Kansas Natural Gas Company and the Olathe Gas Company, dated November 30, 1908, for a supply of gas to the City of Olathe, Kansas;

Contract between Kaw Gas Company and the Ft. Scott Gas and Electric Company, dated March 13, 1907, for a supply of gas to Ft. Scott, Kansas, and assumed by Kansas Natural Gas Company;

Contract between Kansas Natural Gas Company and the Central Gas Company and W. C. Gunn, dated July 29, 1911, for a supply of gas to Moran, Bronson, Kansas; Deerfield, Missouri, and

89-13 Nevada, Missouri; and contract between the same parties, dated May 1, 1910, for a supply of gas to the same community;

Contract between Kansas Natural Gas Company and Central Gas Company and W. C. Gunn, dated January 16, 1911, for a supply of gas to Nevada Missouri, said last three mentioned contracts now held by the Ft. Scott and Nevada Light Heat, Water and Power Company;

Contract between the Kaw Gas Company and the Carl Junction Gas Company, dated December 1, 1905, for a supply of gas for Carl Junction, Missouri, and assumed by Kansas Natural Gas Company;

Contract between the Kaw Gas Company and Oronogo Gas Company, dated December 1, 1905, for a supply of gas for Oronogo, Missouri, and assumed by Kansas Natural Gas Company;

Contract between the Kansas City Pipe Line Company and The Wyandotte Gas Company, dated February 1, 1905, for a supply of gas for Kansas City, Kansas, Rosedale Kansas and Wyandotte County, Kansas now held by the Wyandotte County Gas Company, and assumed by Kansas Natural Gas Company;

Contract between the Kansas City Pipe Line Company and McGowan, Small and Morgan, dated November 16, 1906, for a supply of gas for Kansas City, Missouri, and the contract between the same parties dated December 3, 1906, for a supply of gas to Kansas City, Missouri, now held by the Kansas City Gas Company and assumed by Kansas Natural Gas Company;

89-14 Contract between the Kaw Gas Company and St. Joseph Gas Company, dated August 30, 1905, for a supply of gas to St. Joseph, Missouri, and assumed by Kansas Natural Gas Company;

Contract between Kansas Natural Gas Company and the Leavenworth Light, Heat and Power Company, dated September —, 1912, heretofore existing between the Kansas Natural Gas Company or

its predecessors and the defendants distributing companies or their predecessors, are not binding upon the Receivers of the Kansas Natural Gas Company or upon the Kansas Natural Gas Company, and the defendants, the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney-General of the State of Missouri, Zach D. Patterson, as counsel of the Public Service Commission of the State of Missouri, and William G. Busby, David E. Blair, Noah W. Simpson, Edward Flad and Edwin J. Bean, as members of the Public Service Commission of the State of Missouri, and their assistants or successors in office, and the Court of Industrial Relations of the State of Kansas, Richard J. Hopkins, as Attorney-General of the State of Kansas, Fred S. Jackson, as attorney for the Court of Industrial Relations of the State of Kansas, and W. L. Huggins, Clyde M. Reed, and George H. Wark as members of the Court of Industrial Relations, and the defendant cities of Kansas and Missouri, except the City of Kansas City, Missouri, are all permanently enjoined from enforcing the aforesaid supply contracts or rates fixed or referred to therein against plain-
 89-15 tiffs, Kansas Natural Gas Company or said distributing companies, and the defendant distributing companies are permanently enjoined from enforcing the said supply contracts or rates fixed or referred to therein against plaintiffs or the Kansas Natural Gas Company and its successors and assigns; and the City of Kansas City, Missouri, having in open court expressly disclaimed any intention of enforcing or attempting to enforce the supply contracts or either of them relating to Kansas City, Missouri, no injunction will run against said city in respect to said contracts.

Tenth.

That the defendants, the Court of Industrial Relations of the State of Kansas, (substituted for the Public Utilities Commission of the State of Kansas), and W. L. Huggins, Clyde M. Reed and George H. Wark, as members of the Court of Industrial Relations of the State of Kansas, and Fred S. Jackson as attorney for the Court of Industrial Relations of the State of Kansas, and Richard J. Hopkins, as Attorney-General of the State of Kansas, and their assistants or successors in office, and all other parties to this suit, and all of the agents, attorneys, servants and employees of each and all of them, are permanently enjoined and prohibited from putting into force or maintaining in effect, or attempting to put in force and maintain in effect by legal proceedings or otherwise, against L. G. Treleven, as Receiver of the Consumers' Light,
 89-16 Company, or other parties hereto, seeking the same relief as plaintiffs, the rates prescribed in the Commission's order of December 10, 1915, or the rates in force on January 1, 1911, prescribed by Section 30, Chapter 238, of the Laws of Kansas, 1911, for the sale or distribution of natural gas to consumers within the State of Kansas, and from enforcing or causing the enforcement of, by legal proceedings or otherwise, against L. G. Treleven, as

Receiver of the Consumers' Light Heat and Power Company, the Wyandotte County Gas Company, or other parties hereto seeking the same relief as plaintiffs, any penal provisions of Section 28, Chapter 238, of the Laws of Kansas, 1911, or any laws of the State of Kansas, on account of the failure or refusal by them, or either of them, to put into force or maintain in effect such rates, or any of them.

Eleventh.

That the rates to consumers fixed by the franchises and ordinances of the defendant cities of Missouri are adjudged to be unreasonably low and non-compensatory; but inasmuch as the rates now in force in the defendant cities of Missouri are rates fixed by the Public Service Commission of Missouri, and have superseded the rates fixed by franchise ordinances in said cities; and inasmuch as neither the Public Service Commission of Missouri nor said defendant cities of Missouri are now attempting to enforce any franchise ordinance rates, no injunction will run against either
89-17 the Public Service Commission of Missouri or against said cities. That the rates to consumers fixed by the franchises and ordinances in the defendant cities of Kansas are adjudged to be unreasonably low and noncompensatory, and all parties hereto are permanently enjoined from enforcing or attempting to enforce the same.

Twelfth.

The Court hereby retains jurisdiction of this cause and of the parties hereto for the further administration of the estate of Kansas Natural Gas Company and for the further purpose of a decision of and decree upon the issues raised by the supplemental pleadings of the several distributing companies filed against the Court of Industrial Relations of Kansas challenging its order dated August 18, 1920, and for the purpose of making such further orders as may be necessary for enforcing this decree and to protect the rights of the parties hereto.

It is further ordered that no one of the parties hereto shall recover his cost against any of the others.

WILBUR F. BOOTH,

Judge.

89-18 This decree is ordered entered at the request of Honorable Wilbur F. Booth District Judge, assigned to this district.

JOHN C. POLLOCK,

Judge.

Filed in the District Court on December 24, 1920.

F. L. CAMPBELL,

Clerk.

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be a true, full, and correct copy of Decree entered in the case of John M. Landon, Receiver, et al. v. The Court of Industrial Relations of the State of Kansas, et al., No. 136-N.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Topeka in said District of Kansas, this 27th day of December, 1920.

— — —
 Clerk.

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X.

Exhibit G to said stipulation is a supplemental petition of the Kansas City Gas Company filed with the Public Service Commission of Missouri in a certain cause then pending before said Commission, in which petition the Public Service Commission of Missouri is informed as to the following facts: (a) The making of the order of the United States District Court dated January 20, 1920, a copy of which order is set forth in paragraph VIII hereof; (b) A statement by the Kansas City Gas Company that it received by mail the notice hereinbefore set forth in paragraph VIII hereof; (c) The supplemental petition of the Kansas City Gas Company states in paragraphs 4 and 5 thereof, as follows:

"4. The Company further states that it desires to pay the Kansas Natural Gas Company and its receiver such a price for gas as will encourage the production of natural gas in the fields and the transportation thereof to Kansas City and favorably compete with other markets, and therefore this Company here now in and before the Commission offers to pay such price as this Commission finds may be necessary to procure an adequate supply of gas to enable this Company to meet the demands of its customers therefor on and after the schedule of rates hereinafter set forth takes effect; said gas to be pure natural gas of a merchantable character.

5. The Company further states that its schedule of rates filed in case 2327 on or about December 20, 1919, was based on the cost of gas to this Company at the city gates, of 28 cents per thousand cubic feet and an adequate supply thereof; that by reason of the increase in the cost of gas to this Company at the city gates as aforesaid, it is necessary to modify said schedule of rates so as to cover said increased cost by increasing the 'Service Charges, therein set forth and the Company hereby modifies its schedule so filed, and as so modified said schedule will read as follows:

Schedule of Rates.

Service Charge:

A monthly charge for service will be made depending upon the size of the meter required to supply the customer's demand, for each meter installed as follows:

Hourly cu. ft. capacity of meters.	Service charge.
90.....	.50
140.....	.75
230.....	1.00
375.....	1.25
475.....	1.50
Over.	Ratably.

91 Gas Charge:

A monthly charge for the natural gas will be made of 80 cents net per thousand cubic feet.

Collection Charge:

A collection charge of 10 per cent. will be added to all bills not paid within 10 days after due."

The prayer of said application is:

"Wherefore, the premises considered, the Kansas City Gas Company prays this Honorable Public Service Commission for relief and orders herein as follows:

(1) To authorize the Kansas City Gas Company to pay such price per thousand cubic feet for natural gas delivered at the city gates on and after the following schedule takes effect, as may be necessary to procure an adequate supply of gas to meet the demands of its customers therefor; said gas to be pure natural gas of a merchantable character.

(2) To authorize the Kansas City Gas Company to charge the following schedule of rates: (Same being a schedule sufficient to pay said increased city gates rate charged by the Receiver of the Kansas Natural Gas Co.)

Service Charge:

A monthly charge for service will be made depending upon the size of the meter required to supply the customer's demand, for each meter installed as follows:

Hourly cu. ft. capacity of meters.	Service charge.
90.....	.50
140.....	.75
230.....	1.00
375.....	1.25
475.....	1.50
Over.	Ratably.

Gas Charge:

A monthly charge for the natural gas will be made of 80 cents net per thousand cubic feet.

Collection Charge:

A collection charge of 10 per cent. will be added to all bills not paid within 10 days after due.

(3) And for such other and further orders and relief as to this Honorable Body may seem meet and proper in the premises."

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XI.

Exhibit H to said stipulation is an opinion and order of the Public Service Commission of the State of Missouri; said opinion, in so far as material, is as follows:

"On May 7, 1920, the Kansas City Gas Company filed the following supplemental petition: (Here Commission quotes portions of supplemental petition referred to in paragraph X hereof).

On the 14th day of July, 1919, the District Court of the United States for the District of Kansas, First Division, in charge of the Receivership of the Kansas Natural Gas Company issued an order known as the 35-cent zone rate order, directing the Receiver of said Company to charge the Kansas City Gas Company 35 cents per thousand cubic feet for natural gas at the city gates of Kansas City. On August 5, 1919, the said 35-cent zone rate order was temporarily suspended by the court, and thereafter upon petition of said Receiver and after full hearing, the Court ordered the reinstatement of the 35-cent rate to take effect on the 25th day of March, 1920, and the same has been in effect since that date.

The present rates of the Kansas City Gas Company to its consumers is a flat rate of eighty cents per thousand cubic feet of gas, with a fifty cent minimum charge which minimum charge will be discontinued by the Company upon the service charge mentioned in its supplemental petition becoming effective. The only change asked by the Company in its rates to the consumers is the substitution of the service charge for the present minimum charge. We are asked therefore at this time to make the following orders:

1. To authorize the Kansas City Gas Company to pay the producing company such a reasonable price as will enable it to compete with

other markets, secure a sufficient supply of natural gas and maintain an uninterrupted and efficient service.

2. To authorize said company to charge such rates as will meet its operating expenses, provide for depreciation, and pay a fair return on the value of its property actually used in the public service.

After due notice the case was heard by four members of the Commission at Kansas City, Missouri, on May 20, 1920, and has been briefed by Counsel for the Company and Kansas City, and now comes on for decision upon the entire record before us.

* * * * *

A memorandum opinion of Judge Booth of the United States Court in relation to his order reinstating the 35-cent City Gate Rate, offered in evidence by the Company, shows that the order was made after careful investigation and consideration by the Court, and we quote therefrom as follows:

93 "The order of July 14, was by its terms not to take effect until after the August, 1919 meter readings. Prior to the effective date a number of the distributing companies, pursuant to permission contained in the order, presented objections to the installation of the new rates * * *

"It was urged by the distributing companies that the 35-cent city gate zone rate order be vacated or that it be suspended and a temporary city gate rate be promulgated in its place. In view of these representations by the distributing companies, the Court issued an order August 5, 1919, temporarily suspending the order of July 14, and in its place promulgated a schedule of rates known as the 28-cent city gate zone schedule * * *

"On October 13, 1919, a petition by the Receiver was presented to the Court for a reinstatement of the 35-cent city gate zone rate order of July 14. A number of distributing companies appeared and took part in the hearing * * *

"The temporary 28-cent city gate zone rate has now been in effect something over five months. Returns for the four months, September-December, 1919, are available for study. Two facts stand out very prominently: (1) That the Receiver has not been able under said rate, to realize a reasonable return on the property used by him in distributing gas to the distributing companies, the net earnings over operating expenses and taxes being for the four months approximately only \$111,000. In making the computation, the cost of gas produced by the Receiver has been figured at the average price paid by him for gas purchased. (2) That the installation of a city-gate rate has resulted in a great diminution of leakage in the plants of distributing companies. The figures of the Receiver show that the leakage in the plants of the distributing companies during the four months ending December 31, 1919, when compared with the leakage during the same four months of 1918, has been reduced approximately 390,000,000 cubic feet.

'Attached to the memorandum submitted by counsel for the distributing companies is a table of figures purporting to show, if the 28-cent city gate zone rate had been in effect during the whole of the year 1919, that the net income of the Receiver would have been over \$677,000. One fundamental error is made in the calculation in assuming that the leakage during the first eight months of the year would have been the same in the plants of the distributing companies, even though the city-gate rate had been installed January 1, 1919, and that therefore, the sales of the Receiver to the distributing companies would have been during those eight months the same as the deliveries to them at the city gates actually were under the former method of charging. Experience during the last four months of the year has demonstrated the fallacy of this assumption. A revision of counsel's figures, made necessary by this fundamental error, will show that the net income of the Receiver after paying cost of gas and operating expenses and taxes would have been, on the 28-cent city-gate basis, for the year 1919 not over one-half the amount claimed by counsel. The same false assumption vitiates the conclusions of counsel as to the results which would have been reached under a 35-cent city gate rate; and the error is further accentuated by failing to recognize that the saving in leakage would have been reflected in decreased sales by the Receiver. It is true that the operating expenses for December 1918, were much higher than the average. But it is also true that the sales of gas for November and December were abnormally high, owing to the unusual scarcity and high price of coal.'

94 It is clear, we think, from the foregoing that the 35-cent City Gate rate promulgated by the United States Court is a just and reasonable rate and will not yield the Receiver more than a fair return on the value of the property used in the service. It also appears that keen competition exists for natural gas; That Oklahoma interests are demanding a greater share of the natural gas produced; that in order to open up new wells the rate must be made such as to attract new money; that if the Kansas City Gas Company does not pay a fair rate, the gas will be deflected to markets nearer the source of supply and will be used for power as well as domestic purposes. We will therefor permit the Kansas City Gas Company to pay said 35-cent rate to the Receiver for gas.

* * * * *

4. Conclusion—Rates Allowed.—

It thus appears that the 35-cent city-gate rate and also the rates to the consumers at Kansas City will not yield more than a reasonable return on the value of the property employed in the public service. It also appears that the average cost of natural gas to eighty-eight per cent of the domestic consumers of the Kansas City Gas Company, after adding the new service charge as proposed, will amount to but 91½¢ per thousand cubic feet, per month per consumer, a very reasonable rate considering the value of natural gas and the prevailing rates at this time for artificial gas. And it also

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appears that while the increased cost of gas to the Kansas City Gas Company for the year 1920 over the year 1919 will be approximately \$531,000.00, the increase in its earnings on account of the new service charges for the year will amount to only about \$441,000.00.

We will, therefore, permit the Kansas City Gas Company to pay said 35-cent City-Gate rate for natural gas and will approve the rates proposed for the Kansas City Gas Company to its consumers. In view, however, of the uncertainty of the gas consumption in the future and the probability that operating costs will change, we will authorize such rates to the consumers for a temporary period of thirteen months only from the effective date of the order herein with the requirement that the Kansas City Gas Company file verified quarterly reports with the Commission, and with reservation of jurisdiction in the Commission to change such rates at any time as conditions may require."

Following said opinion, the Public Service Commission entered its order, which, in so far as material, is as follows:

"Ordered: 1. That the Kansas City Gas Company cancel and withdraw its tariff filed December 20, 1919, entitled its 'P. S. C. Mo. No. 5', and that it be permitted to file in lieu thereof a new schedule of effective for a temporary period of thirteen months from July 1, 1920, containing the rates set out in its supplemental petition filed May 7, 1920, as follows:

95 Gas charge:

A monthly charge of 80¢ net per 1,000 cu. ft.

Service charge:

A monthly charge for service, depending upon size of meter required, for each meter installed as follows:

Hourly cu. ft. capacity of meters.	Service charge.
90.....	.50
140.....	.75
230.....	1.00
375.....	1.25
475.....	1.50
Over.....	Ratably

Collection charge:

10% on all bills not paid within 10 days after due.

Ordered: 2. That any increase of rates which the Kansas City Gas Company is authorized herein to charge its patrons shall remain in effect for a period of thirteen months only from and after July 1, 1920, at the end of which period such increase of rates shall without further order, cease, and the rates of said Company shall then be reduced and restored by said Company to the rates now on file or

charged by it; provided, that the Commission may hereafter at any time by further order continue such increase of rates for another or further period or otherwise change or modify the rates of said Company.

Ordered: 3. That the Kansas City Gas Company be required to keep true and accurate account of the amount of gas purchased and sold by it and of its revenue and expenses and file a full and accurate verified report thereof at the expiration of each period of ninety days after July 1, 1920, which report shall be in addition to any other reports required by law, and that the Commission fully retain jurisdiction of the parties and subject-matter of this case to continue, change or modify the rates of said Company at any time hereafter upon the evidence and facts now before the Commission or upon such further evidence as the Company or any interested party may offer.

Ordered: 4. That the Kansas City Gas Company be permitted to pay the Kansas Natural Gas Company or its receiver the 35-cent City-Gate rate for natural gas as provided in the order of Judge Booth mentioned in the report of the Commission herein, until otherwise ordered by the Commission."

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XII.

Exhibit 2 offered in evidence is a certified copy of the articles of incorporation of the Kansas Natural Gas Company on file in the office of the Secretary of State of Missouri; the material parts of which are as follows:

"Third. The objects and purposes for which and for any of which this corporation is formed are, to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz:

To produce, purchase and acquire natural gas; to pipe, convey and transport natural gas from the place or places where the same is produced, purchased or acquired, to such cities, towns, villages and places in the State of Kansas and Missouri, as may afford convenient and satisfactory markets for the same; to lay, maintain and operate, repair and remove such lines of iron and steel pipe as may be necessary or convenient in piping, conveying and transporting of natural gas; to lay such street mains and conduits as may be necessary to supply gas to consumers; to build, construct and operate such pump stations, compressor stations, tanks, machinery, gaso-meters, buildings, and structures as may be necessary or convenient in the production, transportation and supply of natural gas; to purchase, acquire, own and hold such real and personal estate, including rights-of-way, as may be necessary or convenient in connection with the construction and erection of the improvements aforesaid; * * *

XIII.

Exhibit 3 offered in evidence is a certified copy of the articles of incorporation of the Kansas Natural Gas Company on file in the office of the Secretary of State of Kansas; the material part of which is paragraph third reading the same as paragraph third of said articles on file in the State of Missouri, set forth in the last preceding paragraph.

XIV.

Exhibit 4 offered in evidence is a certified copy of the articles of incorporation of The Kansas City Pipe Line Company on file in the office of the Secretary of State of Kansas. To said exhibit the defendant made the following objection:

"(By Mr. Garver:) That concern is out of business, and has nothing to do with this controversy whatever, and I object to Exhibit 4 being received in evidence."

No ruling by the court.

The material parts of said exhibits are as follows:

"Third. The objects for which this corporation is formed are:

To prospect, drill, mine for and produce natural gas, and to transport the same by pipe lines or any other available means or method, and market and sell the same.

To take and hold rights and franchises for the sale, furnishing and transportation of natural gas.

To lay, build, and acquire by lease, purchase or otherwise, and afterwards to maintain and operate, pipe lines and mains for all sizes, kinds and descriptions necessary or convenient for the transportation of natural gas.

To purchase or otherwise acquire natural gas and to transport, pipe, market and sell the same to consumers thereof. * * *

XV.

Exhibit 5 offered in evidence is a certified copy of the articles of incorporation of the Kaw Gas Company on file in the office of the Secretary of State of Missouri. To said exhibit the defendant made the following objection:

"(By Mr. Garver:) I make the same objection to Exhibit 5 as I have made to Exhibit 4."

No ruling by the court.

The material parts of said Exhibit are as follows:

"III. The objects and purposes for which this corporation is formed are as follows:

(a) To prospect for, drill for, mine for and produce petroleum oil and natural gas, and the same to transport by pipe lines or any other available means or method, and to market and sell the same.

(b) To refine or manufacture petroleum oil into its several products, and to transport, market and sell the same.

(c) To take and hold rights and franchises for the sale, furnishing and transportation of natural gas, and to lay and maintain pipe lines and mains of all sizes, kinds and description necessary or convenient for the transportation of natural gas.

98 (d) To purchase or otherwise acquire natural gas and to transport, pipe, market and sell the same to consumers thereof. * * *

State of Missouri.

No. 1227.

Certificate & License.

Whereas, The Kaw Gas Company incorporated under the laws of the State of West Virginia has filed in the office of the Secretary of State duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Private Corporations.

Now, therefore, I, John E. Swanger, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said The Kaw Gas Company is from the date hereof duly authorized and licensed to engage exclusively, in the State of Missouri, in the business of Prospecting, drilling, and mining for petroleum oil and natural gas, and transporting the same by pipelines or any other available means or methods, and marketing and selling the same; refining or manufacturing petroleum oil into its several products; taking and holding rights and franchises for the sale and transportation of natural gas and the laying and maintaining of pipelines and mains; and the purchasing or otherwise acquiring natural gas and the transportation, piping, marketing and sale of the same to consumers thereof, which is authorized by its charter, for a term ending April 13th, 1955, and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State, that the amount of the capital stock of said corporation is One Hundred Thousand Dollars, and the amount of said capital stock represented by its property located and business transacted in the State of Missouri is One Hundred Thousand Dollars; and that its public office for the transaction of business in Missouri is located at Joplin.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this 5th day of June, A. D. Nineteen Hundred and Five.

[SEAL.]

JNO. E. SWANGER,
Secretary of State.

By ————,
Chief Clerk."

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XVI.

Exhibit 6 offered in evidence is the certified copy of the acceptance of the Kansas City Gas Company of the order of the Public Service Commission of Missouri, and is as follows:

"June 16th, 1920.

I—We, Kansas City Gas Company hereby admit service on this date of a certified copy of an order of the Public Service Commission of Missouri, dated June 14, 1920, in the matter of 2231, 2263, 2327. The application for approval of new schedule of rates, Cases Nos. 2231, 2263 and 2327, the terms of which are accepted and will be obeyed.

SIGN HERE: KANSAS CITY GAS COMPANY,
By J. W. DANA,
General Counsel.

STATE OF MISSOURI,

Office of the Public Service Commission.

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 15th day of May, 1922.

L. H. BREUER,
Secretary.

XVII.

Exhibit 7 offered in evidence is an application of the Kansas City Gas Company filed with the Public Service Commission of Missouri, on May 13, 1922, docket No. 3317, the material parts of which are as follows:

"1. That on the 14th day of June, 1920, this Honorable Body issued an opinion and order in case Nos. 2231, 2263 and 2327 consolidated, in which it fixed the city gates price for natural gas furnished by the Kansas Natural Gas Company to the Kansas City Gas Company at 35 cents per thousand cubic feet delivered at the city gates; that thereupon and thereafter the Kansas City Gas Company has paid said Kansas Natural Gas Company 35 cents per thousand cubic feet for said gas.

2. That on or about the first day of April, 1922, said Kansas Natural Gas Company notified this Company that on and after April, 1922, meter-readings, it would charge at the rate of 40 cents per thousand cubic feet for all gas delivered to this Company at the city gates; a true and correct copy of said notice being hereto attached, marked Exhibit A, and made a part hereof.

100 3. That on April 20, 1922, this Company notified said Kansas Natural Gas Company that it would accept and receive gas delivered by said Kansas Natural Gas Company into the mains of this Company on and after said April 1922 meter-readings only upon the express understanding that it would pay therefor at the rate of 35 cents per thousand cubic feet until the effective date of orders issued by the Public Service Commission of Missouri authorizing this Company to pay 40 cents per thousand cubic feet for such gas, or such other rate as the Commission may allow, and to charge its customers therefor sufficient rates to fully cover said increase; a true and correct copy of said notice being hereto attached, marked Exhibit 8, and made a part hereof.

4. That on April 25, 1922, said Kansas Natural Gas Company notified the Kansas City Gas Company that it would not furnish said gas at 35 cents per thousand cubic feet and that unless said Kansas City Gas Company agreed to accept and pay for said gas at the rate of 40 cents per thousand cubic feet on or before the first day of May, 1922, said Kansas Natural Gas Company would shut off and discontinue the supply of gas to said Kansas City Gas Company; a true and correct copy of said notice being hereto attached, marked Exhibit C, and made a part hereof.

5. That on April 26, 1922, said Kansas City Gas Company notified said Kansas Natural Gas Company that it would not agree to accept and pay for said gas at the rate of 40 cents per thousand cubic feet; a true and correct copy of said notice being hereto attached, marked Exhibit D, and made a part hereof.

6. That on April 29, 1922, a suit was commenced in the United States District Court for the Western Division of the Western District of Missouri, entitled "State of Missouri on relation of Jesse W. Barrett, Attorney-General of the State of Missouri, and the Public Service Commission of the State of Missouri, complainants, vs. Kansas Natural Gas Company, a corporation, defendant, No. 361 In Equity" and a restraining order was issued therein enjoining said Kansas Natural Gas Company from shutting off or discontinuing the supply of gas to said Kansas City Gas Company pending the further hearing of said cause, and that on May 4, 1922, said Kansas Natural Gas Company filed its answer in said cause; the bill of complaint, restraining order and answer in said cause, being hereby referred to and made a part hereof.

7. That said Kansas Natural Gas Company denies the jurisdiction of this Commission to fix and determine the city gates rate for gas furnished by it to the Kansas City Gas Company and refuses to

file its rates and charges with the Public Service Commission of Missouri in the manner provided by law, or to apply to the Commission or submit in any manner to the jurisdiction, power and control of the State of Missouri or the Public Service Commission of said state; and claims the right as an importer and vendor of gas to itself fix and determine the price and charge therefor; that the jurisdiction of this Commission over said Kansas Natural Gas Company and its rates, charges and practices must be determined by an appeal to the United States Supreme Court in the aforesaid case pending in the United States District Court for the Western Division of the Western District of Missouri; that said appeal and the final determination thereof will require at least two years' time; that during said time said five cent increase in the city gates price of gas will amount
101 to at least \$500,000.00; that if it is finally determined that said Kansas Natural Gas Company and its rates and charges are subject to the jurisdiction and laws of the State of Missouri and the orders of this Commission, then and in that event said increase will be unlawful and said demand upon the Kansas City Gas Company therefor will be non-enforceable at law; but if it shall be finally determined that said Kansas Natural Gas Company is not under the jurisdiction of this Commission and that it has the right to fix and determine its own charge for natural gas, said Kansas Natural Gas Company will have a claim and demand against the Kansas City Gas Company in excess of \$500,000.00.

8. That the Kansas City Gas Company is unable to pay said increase of five cents per thousand cubic feet at the present time, or said \$500,000.00 on the final determination of said cause, out of the income from the sale of said gas at the present schedule of rates heretofore approved and allowed by this Commission, to-wit, schedule P. S. C. Mo. No. 6, providing for an 80-cent gas rate and a 50-cent service-charge, hereby referred to and made a part hereof; that if said demands of said Kansas Natural Gas Company are legal and finally sustained said five cent increase will date from April 1922 meter-readings; that by reason thereof and in order to protect said Kansas City Gas Company from loss in the premises and to continue the service to the public of Kansas City, Missouri, pending the final adjudication and determination of the jurisdiction of this Commission it is necessary for said Kansas City Gas Company to increase its gas-rate from 80 to 85 cents per thousand cubic feet; and that by reason of the premises and the existing emergency the Company has filed with the Commission in the manner provided by law its P. S. C. Mo. No. 7, cancelling P. S. C. Mo. No. 6, as per copy hereto attached, marked Exhibit E, and made a part hereof; and that by reason of said emergency said schedule should take effect immediately and said rate should apply to all gas furnished on and after the April 1922 meter-readings.

9. The Kansas City Gas Company further states and shows to the Commission that it is not at this time earning a full and fair return under its present effective schedule of rates after paying said Kansas Natural Gas Company 35 cents per thousand feet for said

natural gas; that if it is finally determined judicially that said Kansas Natural Gas Company is entitled to charge and collect said 40 cents per thousand feet for said gas from and after April 1922 meter-readings, said schedule of rates now in force and effect is at this time and will continue to be during said litigation unreasonably low, non-compensatory and confiscatory of the property of this Company used and useful in the service of the public.

10. The Kansas City Gas Company here now offers to charge and collect said 5 cents additional per thousand cubic feet of gas sold by it and to hold the same in a reserve fund and to account for and return the same to each and every consumer in the amounts paid by said consumer, if and when it shall be finally and judicially determined that the demands of said Kansas Natural Gas Company

upon the Kansas City Gas Company for said increase from 102 35 cents to 40 cents per thousand cubic feet for gas delivered on and after the April 1922 meter-readings were and are wrongful, unlawful and non-enforceable against said Kansas City Gas Company; or to make such other disposition of said fund so collected as this Honorable Commission may direct upon the final determination of the jurisdiction of this Commission in the premises.

11. The Kansas City Gas Company further states that notwithstanding that said Kansas Natural Gas Company denies the power, jurisdiction and control of this Commission over its plant, property and business in this state, said company is furnishing and delivering and selling natural gas within the State of Missouri to the Kansas City Gas Company and other gas corporations doing a public service business in this state and said Kansas Natural Gas Company is a public service gas corporation within the meaning of the Public Service Commission Act of this state and that said Company should be summoned and cited to appear before this Commission and show cause and justify its increase in the city gates rate for gas from 35 cents to 40 cents per thousand cubic feet.

Wherefore, the premises considered the Kansas City Gas Company prays this Honorable Commission as follows:

103 " (1) To enter an order approving said schedule P. S. C.

Mo. 7 cancelling P. S. C. Mo. No. 6, now in force and effect, and declaring that an emergency exists and that it is necessary in order to continue the natural gas supply and service to the public pending the final adjudication and determination of the jurisdiction of the Commission over the Kansas Natural Gas Company; that said schedule take effect forthwith and apply to all bills collected on and after June 1, 1922.

(2) To enter an order citing and summoning the Kansas Natural Gas Company to be and appear before the Commission on a day certain and show cause for and justify its increase in rates from 35 cents to 40 cents per thousand cubic feet for gas furnished the Kansas City Gas Company. * * *

The following exhibits were attached to said application Exhibit 7 in evidence:

Kansas Natural Gas Company.

(Letterhead.)

Bartlesville, Oklahoma, April 1st, 1922.

Kansas City Gas Company,
Kansas City,
Missouri.

GENTLEMEN:

You are hereby notified that on and after April, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces above atmospheric pressure, atmospheric pressure being assumed to be 14.41 pounds per square inch.

Yours very truly,

KANSAS NATURAL GAS COMPANY,
(Signed) By H. L. MONTGOMERY.

103a Kansas City Gas Company.

Letterhead.

April 20, 1922.

Kansas Natural Gas Company,
Independence, Kansas.

Attention Mr. H. L. Montgomery.

DEAR SIR:

This is to acknowledge receipt of your communication reading as follows:

"Kansas Natural Gas Company.

Bartlesville, Okla., April 1st, 1922.

Kansas City Gas Company,
Kansas City, Missouri.

GENTLEMEN:

You are hereby notified that on and after April, 1922, meter reading you will be charged at the rate of forty cents per thousand cubic feet for all gas delivered to you at the town border measuring station, gas to be computed on a temperature basis of sixty degrees Fahrenheit, and a pressure basis of eight ounces above atmos-

pheric pressure, atmospheric pressure being assumed to be 14.41 pounds per square inch.

Very truly yours,

KANSAS NATURAL GAS COMPANY,

(Signed) By H. L. MONTGOMERY.

103b Replying will say that the foregoing is based upon the assumptions—

1. That the Kansas Natural Gas Company is not subject to the jurisdiction of the Public Service Commission of Missouri.
2. That it is not bound by contract, express or implied.
3. That it is free to change its rates and charges without the consent of the Kansas City Gas Company.
4. That it may shut off and discontinue the supply of gas at will.

The Kansas City Gas Company is advised by counsel that these assumptions are unfounded in law and in fact; that the Kansas Natural Gas Company in the delivery and sale of natural gas at Kansas City and within the State of Missouri is a public service gas corporation within the meaning of the Public Service Commission Act of Missouri and subject to the jurisdiction of the Public Service Commission of said State, and is a foreign corporation doing business in the State of Missouri and subject to all the statutes and laws of said State; that the Kansas Natural Gas Company is bound

103c by contract evidenced by the stipulation executed by said Kansas Natural Gas Company and Kansas City Gas Company dated April 29, 1920; the supplemental petition to the Public Service Commission filed May 3, 1920, pursuant to said stipulation for an order authorizing the Kansas City Gas Company to pay the Kansas Natural Gas Company 35 cents for gas at the city gates then demanded by said Kansas Natural Gas Company, and authorizing said Kansas City Gas Company to charge sufficient rates to the consumers to enable it so to do; and the order of the Public Service Commission of Missouri dated June 14, 1920, authorizing the Kansas City Gas Company to pay said Kansas Natural Gas Company said 35 cents city gates rate for natural gas and approving the schedule of rates filed with the Commission to enable it so to do, under which said contract the Kansas Natural Gas Company undertook and agreed with the Kansas City Gas Company to furnish gas delivered at the city gates at 35 cents per thousand cubic feet during such time as the rates applied for by the Kansas City Gas Company and allowed by the Public Service Commission of Missouri and accepted and put into effect by this Company should remain in force and effect, and that said contract is now and will continue to be binding upon said Kansas Natural Gas Company so long as said 103d schedule of rates on file with the Public Service Commission of Missouri continues in force and effect; that the Kansas Natural Gas Company may not change the city gates price for said gas without the consent of the Kansas City Gas Company; and that the Kan-

103e Kansas Natural Gas Company is conducting a business affected with the public interest and may not shut off or discontinue the supply of gas to the Kansas City Gas Company and its patrons without the consent and approval of the public authorities of the State of Missouri.

This is therefore to notify you that the Kansas City Gas Company will accept and receive gas delivered by the Kansas Natural Gas Company into the system of this Company at 25th and Genessee Streets and 39th and Stateline Streets, both within the State of Missouri, on and after April, 1922 meter-readings only upon the express understanding that it will pay therefor at the rate of 35 cents per thousand cubic feet until the effective date of orders issued by the Public Service Commission of Missouri authorizing this Company to pay 40 cents per thousand cubic feet for such gas, or such other rate as the Commission may allow, and to charge its customers therefor sufficient rates to fully cover said increase.

Yours very truly,
KANSAS CITY GAS COMPANY,
By C. W. GREEN,
General Manager.

103f Kansas Natural Gas Company.

Letterhead.

Bartlesville, Okla., April 25, 1922.

Kansas City Gas Co.,
Kansas City, Missouri.

Attention Mr. C. W. Green, General Manager.

DEAR SIR:

This will acknowledge your letter of the 20th, received today, in which you state that the Kansas City Gas Company will accept and receive gas delivered by the Kansas Natural Gas Company into the system of that Company at the 25th and Genessee Street Station and 39th and State-Line Streets, both within the State of Missouri, on and after the April, 1922, meter readings only upon the express understanding that it will pay therefor at the rate of 35c per thousand cubic feet until the effective date of orders issued by the Public Service Commission of Missouri authorizing that Company to pay 40c per thousand cubic feet for such gas.

You are hereby notified that the Kansas Natural Gas Company will not furnish you gas at 35c per thousand cubic feet and that unless it receives notice from you that the Kansas City Gas Company will accept and pay for gas at the rate of 40c per thousand cubic feet, as per our notice to you of April 1, 1922, on or before the 1st day of May, 1922, the Kansas Natural Gas Company will discontinue service,

Yours very truly,
KANSAS NATURAL GAS COMPANY,
By H. L. MONTGOMERY.

103g

Kansas City Gas Company.

(Letterhead.)

April 26, 1922.

Kansas Natural Gas Company,
Independence, Kansas.

Attention Mr. H. L. Montgomery, General Manager.

DEAR SIR:

This is to acknowledge receipt of your letter of April 25, 1922; replying, this is to notify you that the Kansas City Gas Company does not and will not consent or agree in writing or verbally, express or implied, by word, act, or deed, to accept and pay for gas at the rate of 40 cents per thousand cubic feet as per your notice of April 1, 1922, and stands upon its notice to you dated April 20, 1922, to accept and receive gas delivered by the Kansas Natural Gas Company only upon the express understanding that the Kansas City Gas Company will pay therefor at the rate of 35 cents per thousand cubic feet; and you must make your election whether or not to continue to furnish gas to the Kansas City Gas Company on the terms and conditions set forth in said letter of the Kansas City Gas Company to the Kansas Natural Gas Company dated April 20, 1922, or discontinue the service.

103h

And this is to further notify you that the Kansas City Gas Company will hold the Kansas Natural Gas Company liable in damages for the breach of its contract for a supply of gas as set forth and referred to in said letter of April 20, 1922, and will also hold said Kansas Natural Gas Company liable for all damages, loss, cost and expense incurred by the Kansas City Gas Company by reason of the discontinuance of the service and supply of natural gas to said Kansas City Gas Company by said Kansas Natural Gas Company if discontinued pursuant to your letter of April 25, 1922.

Yours very truly,

KANSAS CITY GAS COMPANY,
By C. W. GREEN,
General Manager.

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XVIII.

Exhibit 8 offered in evidence is a sample bill rendered by the Kansas Natural Gas Company to the Kansas City Gas Company, detailed statement of daily deliveries, remittance check and voucher for gas furnished by the Kansas Natural Gas Company to the Kansas City Gas Company for one month, as follows:

Independence, Kansas, March 31st, 1922.

Kansas City Gas Company,
906-910 Grand Ave.,
Kansas City, Missouri:

In Account with Kansas Natural Gas Company.

We charge you.

1922.

Mar. 31. Balance due 40,022.15

Mar. 31. For gas delivered you at City Gates during the
period from February 25th, to March 25th,
1922, as follows:

Thru all City Gas Meters, 484,023M,
@ 35¢ 169,408.05
209,430.20

Detailed statement attached.

Please make check payable to Kansas Natural Gas Company, and
mail promptly to Independence, Kansas.

105 Kansas City, Missouri.

The following is a statement showing amount due for gas de-
livered through all Meters No. —, Location —, County —,
during the periods as shown below, as per contract dated — —,
—, with The Kansas City Gas Company.

Copies to: — —.

(Signed)

V. C. JARBOE,
Supt. of Distribution.

Contract No. —.

1922.

Period covered.		Delivery, 8 oz. basis.	Remarks.
From—	To—		
February	26.....	16,622	.....
.....	27.....	17,688	.....
.....	28.....	19,483	.....
March	1.....	21,432	.....
.....	2.....	19,590	.....
.....	3.....	18,553	.....
.....	4.....	17,648	.....
.....	5.....	16,641	.....
.....	6.....	16,252	.....
.....	7.....	17,484	.....
.....	8.....	17,295	.....
.....	9.....	16,273	.....

Period covered.		Delivery, 8 oz. basis.	Remarks.
From—	To—		
.....	March 10.....	16,309	.....
.....	11.....	16,879	.....
.....	12.....	15,800	.....
.....	13.....	15,827	.....
.....	14.....	15,470	.....
.....	15.....	16,123	.....
.....	16.....	15,178	.....
.....	17.....	15,094	.....
.....	18.....	14,376	.....
.....	19.....	14,255	.....
.....	20.....	18,141	.....
.....	21.....	16,870	.....
.....	22.....	17,222	.....
.....	23.....	15,215	.....
.....	24.....	13,334	.....
.....	25.....	14,115	.....
		465,169	

Factor to correct for specific gravity and temperature flow
1.040531.

Total, 465,169 x 1.040531, 484,023, @ \$169,408.05.

Accounting Data, etc.

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(Copy of Check of K. C. Gas Co.)

(Face.)

Kansas City Gas Company.

Voucher, Check, No. 6888.

Kansas City, Mo., April 14, 1922.

Pay to the Order of Kansas Natural Gas Company \$166,150.25,
the sum of \$166,150 and 25 cts.

Endorsement of this check is accepted in full payment of in-
voices detailed on back.

KANSAS CITY GAS COMPANY.

Countersigned:

(Signed) C. W. GREEN,
Vice President.

(Signed) FRANK CARPENTER,
Asst. Secretary.

To Commerce Trust Co., 18-11 Kansas City, Mo.

(Back.)

In payment of the following invoices, no receipt necessary:
Date, 4-1-1922; Amount, 166,150.25.

(Copy of Voucher of K. C. Gas Co.)

Kansas City Gas Company, 908-910 Grand Avenue, Kansas City,
Missouri, to Kansas Natural Gas Company, Independence, Kan-
sas, Account Nat'l Gas Purchased.

Date.	Invoice.
-------	----------

4-14-22.	1099.	For gas received through measur- ing stations from February 25th, 1922, to March 25th, 1922, 474,715,000 cubic feet @ 35..	166,150.25
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(Rubber Stamp: Paid by check No. 6888, Apr. 14, 1922, on
Commerce Trust Co.)

Received — — —, 192-, from Kansas City Gas Company
One hundred sixty six thousand one hundred fifty and 25/100 dol-
lars in full for above bill.

\$166,150.25.

Per — — —,

Receipt and return to Kansas City Gas Company, Kansas City,
Mo.

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XIX.

Exhibit 9 offered in evidence is the check of the Kansas City Gas
Company to the Kansas Natural Gas Company dated June 14,
1922, for gas furnished from April 25 to May 25, 1922, together
with letter of Kansas Natural returning the same, as follows:

(Face.)

Voucher, Check, No. 7760.

Kansas City Gas Company.

Kansas City, Mo., June 14, 1922.

Pay to the Order of Kansas Natural Gas Company \$142,305.45,
the sum of \$142,305 and 45 cts.

Endorsement of this check is accepted in full payment of invoices on back.

KANSAS CITY GAS COMPANY.

Countersigned:

(Signed) C. W. GREEN,

Vice President.

(Signed) FRANK CARPENTER,

Asst. Secretary.

To Commerce Trust Co., 18-11 Kansas City, Mo.

(Back.)

In payment of the following invoices, no receipt necessary:
Date, 6-1-22; Amount, 142,305.45.

This check is tendered in full payment, accord and satisfaction for all gas furnished from April 25, 1922, to May 25, 1922, all stipulations, claims, demands, notices and court or commission orders to the contrary notwithstanding. Computed at 406,587,000 cubic feet at 35¢ per thousand cubic feet \$142,305.45.

The Empire Companies.

(Letterhead.)

Bartlesville, Okla., June 17, 1922.

Kansas City Gas Company,
Kansas City, Mo.

GENTLEMEN:

On advice of our Legal Department we are returning herewith your check #7760, dated June 14, 1922, for \$142,305.45, tendered to us for payment of gas furnished from April 25th to May 25th 1922, for the reason that the condition you have imposed is impossible of our acceptance.

The matter will be taken up further with you by our Legal Department.

Yours very truly,

KANSAS NATURAL GAS COMPANY.

V. B. DAY,

Asst. Treasurer.

Exhibit 10 offered in evidence is a certified copy of the order of the County Court of Jasper County, Missouri. To the reception of said exhibit in evidence the defendant objected as follows:

"(By Mr. Higgins:) We object to that as wholly immaterial and irrelevant to any issue in this case.

No ruling by the court. Said exhibit is as follows:

Certified Copy of Order.

STATE OF MISSOURI,

County of Jasper, ss:

Jasper County Court, May Term, 1903.

Be it remembered, That on the 21st day of July, 1903, in said Court, the following among other proceedings were had, to wit:

Now, on this 21st day of July, A. D., 1903, comes M. M. Sweetman and files and presents to the County Court his petition for an order granting to said M. M. Sweetman, his successors and assigns, power, authority and permission to lay, construct, maintain and operate pipes and pipe lines through, on, under and across the public roads, highways, bridges, ways and viaducts of Jasper County, Missouri, for the purpose of piping, conveying and transporting therein and thereby, natural and manufactured gas, oil and petroleum or either of said products, and the Board of County Commissioners, having examined the said petition, and being well advised on the premises, doth find that the power, authority and permission prayed for in said petition should be granted, wherefore, it is ordered that the said M. M. Sweetman, his successors and assigns be, and they are hereby granted and given the power, authority, right and permission to lay, construct, maintain and operate pipes, and pipe lines through, on, under and across the public roads, highways, bridges, ways and viaducts of Jasper County, Missouri, for the purpose of piping, conveying and transporting therein and thereby, natural and manufactured gas, oil and petroleum or either of said products. Provided: That said lines shall be constructed and operated so as not to inconvenience or endanger the public in the use of said highways, roads and bridges and provided that before the commencement of the construction or operation thereof, to file a bond in the sum of \$1,000.00 with the County Clerk of Jasper County, to indemnify the County of Jasper or any special road district in said County through which said pipe line may be laid or constructed, from damage, injury, loss or expense to any person or property, or to said road district, caused by the grantee in the construction and operation of said pipe line, or in paving or re-paving or repairing any road.

Court approved the bond of M. M. Sweetman, et al.

Record of County of Jasper County, Missouri, No. 29, at pages 109 and 110 thereof.

STATE OF MISSOURI,

County of Jasper, ss:

I, Chas. Davisson, Clerk of the County Court within and for the State and County aforesaid, hereby certify that the within and foregoing is a true copy of an order made by said County Court on the day and year above written, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Carthage, this the 12th day of May, 1922.

(Signed)

CHAS. DAVISSON,
Clerk.

[SEAL.]

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XXI.

Exhibit 11 offered in evidence, omitting formal parts, is as follows:

Affidavit of L. M. Thomas, Deputy Clerk County Court, County Clerk of Jasper County, Missouri.

STATE OF MISSOURI,
County of Jasper, ss:

L. M. Thomas, Deputy Clerk County Court being first duly sworn according to law, upon his oath deposes and says:

That he is the duly appointed, qualified and acting Deputy Clerk of the County Court of the County of Jasper, State of Missouri, and as such Deputy Clerk has charge of and custody over the records of said County Court; that this affiant took office as Deputy Clerk of the said County Court on the 1st day of January, 1919, and that prior to said date this affiant had been County Clerk, and in said Clerk's office was familiar with the business transacted by said County Court for a period of 19 years; that this affiant has made careful search of the files, minutes and records of said Jasper County Court for the purpose of ascertaining and determining what, if any, grants or orders have heretofore been made by said Court granting to any person or persons, firms or corporations, any right to lay pipe lines in, through or under the public roads in said County; that the only grant or order of such character which this affiant discovered in making said search was a certain order made on the 21st day of July, 1903, being the 24th day of the May term, 1903, of said Court, in which said order said Court granted to one M. M. Sweetman, his successors and assigns, the power, authority and permission to lay, construct, maintain and operate pipes and pipe lines through, on, under and across the public roads, highways, bridges, ways and viaducts of Jasper County, Missouri for the purpose of piping, conveying and transporting therein and thereby natural and manufactured gas, oil, and petroleum, or either of said products, said order being entered in Record 29, page 109, of said County Court.

And, therefore, this affiant says that to his best knowledge and belief there has never been made any order by the County Court of Jasper County, Missouri, granting to any person or persons, firm or corporation, any right or permission to lay or construct pipe lines in, through, under or across the public roads or highways of Jasper County, Missouri, for the purpose of distribution or transportation

of natural or manufactured gas, other than the grant to the said M. M. Sweetman above referred to.

(Signed)

L. M. THOMAS,
Deputy County Clerk.

[SEAL.]

Subscribed and sworn to before me this 24 day of May, 1922.

(Signed)

J. F. REIDHAAR,
Deputy County Clerk.

110

XXII.

Exhibit 12 offered in evidence, omitting formal parts, is as follows:

Affidavit of H. G. Packer.

STATE OF MISSOURI,
County of Jasper, ss:

H. G. Packer, of lawful age, being first duly sworn according to law, upon his oath deposes and says; that he resides at Royal Heights, a suburb of but not lying within the corporate limits of the city of Joplin, in Jasper County, Missouri, said Royal Heights being in said Jasper County, Missouri; that this affiant is a consumer and user of natural gas at his residence in said Royal Heights, and has been for a period of approximately eleven years; that affiant purchases and secures said natural gas from the Kansas Natural Gas Company, same being transported to affiant's residence through pipes laid under a public road adjoining affiant's residence; that affiant pays the bills for natural gas consumed at his said residence, monthly, to the Kansas Natural Gas Company at the office of said Kansas Natural Gas Company, being room 113 in Miners Bank Building, northwest corner of Joplin Avenue and Fourth Street, in the City of Joplin, Jasper County, Missouri; that this affiant is engaged in the automobile business in the city of Joplin and is familiar with the office of said Kansas Natural Gas Company; that there is painted upon a window in said office, fronting the hallway in said building, the words "Kansas Natural Gas Co."; that said office has been maintained at said place by said Kansas Natural Gas Company for a period of approximately eleven years, and is maintained there at the time of making this affidavit; that said Kansas Natural Gas Company carries its name in the telephone directory of the city of Joplin, being listed therein as follows:

Tel. No. 612—Kansas Natural Gas Co., r. 113 Miners Bank Bldg.

Tel. No. 193—Kansas Natural Gas Co., Warehouse, 518 E. 5th St.

that attached hereto and made a part of this affidavit is affiant's paid gas bill for gas consumed at affiant's residence in Royal Heights during the month of April, 1922; that said gas bill is identical excepting as to dates, amount of gas consumed and amount of bill, with monthly statements or bills which this affiant has received for gas consumed at his home during the time above mentioned; that all of affiant's

neighbors and all residents of Royal Heights with whom affiant is acquainted, purchase natural gas from the Kansas Natural Gas Company under the same conditions and in the same manner as affiant. And further affiant saith not.

(Signed)

H. G. PACKER.

Subscribed and sworn to before me, this 25th day of May, 1922.

(Signed)

RAY BOND,

Notary Public Within and for
Jasper County, State of Missouri.

[SEAL.]

My commission expires Aug. 21, 1924.

111 (Card Attached to Affidavit of H. C. Packer.)

Form 103 12-21 5M.

Telephone, 612.

Office Hours, 8:30 A. M. to 5 P. M. daily. Evenings Sat. before and on the 10th.

H. G. Packer to Kansas Natural Gas Company., Dr.

Miners Bank Building, Joplin, Missouri.

4/26. Meter Reading, 454,000 Feet.

3/26. Meter Reading, 449,000 Feet.

Gas consumed, 5,000 Feet @ 77¢ per 1000 Ft....	\$3.85
Less 7 per 1,000 cubic feet if paid on or before May 10th, 1922 .....	.35
	<hr/> \$3.50

This bill is due May 1st, 1922. If not paid on or before the 10th, gas may be shut off without further notice.

Positively no discount after the 10th.

If paid by check receipt will not be returned unless requested.

Please mail or bring this card to be receipted.

The Poplin Printing Co., Joplin, Mo. 86941.

(Rubber stamp on face: Kansas Natural Gas Company, Joplin, Mo. Received Payment May 4, 1922.)

Addressed on front: H. G. Packer, c/o Century Garage, Joplin, Mo.

Postmark: Joplin, Mo., May 1, 1922, 1:30 P. M.

Cancelled 1 cent stamp.

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XXIII.

Exhibit 13 offered in evidence is an affidavit of H. W. Sterling. To the reception of said exhibit in evidence the defendant objected upon the ground that the same was immaterial. There was no ruling by the court. The material parts of said exhibit are as follows:

Affidavit.

STATE OF MISSOURI,
County of Jasper, ss:

H. W. Sterling, of lawful age, being first duly sworn, upon his oath states that he resides in Duenweg, an unincorporated village in Jasper County, Missouri, a few miles east of the City of Joplin, and that he is engaged in business in said village, and that he uses natural gas both at his place of business and at his residence, and has been so doing for many years; that said gas is furnished to him at both places, and to many other customers in said village, by Kansas Natural Gas Company, which has for many years maintained an office in Miners Bank Building, City of Joplin, in said County, with a person in charge thereof, at which place bills for gas so used are paid, and that the attached exhibit is receipt issued by said company to this affiant for his gas bill for the month of February, 1921.

(Signed)

H. W. STERLING.

Subscribed and sworn to before me this 25th day of May, 1922.

My term expires Aug. 15, 1923.

(Signed)

H. W. BLAIR,

Notary Public.

[SEAL.]

Card attached to this affidavit in same form as in the last preceding paragraph.

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XXIV.

Exhibit 14 offered in evidence, omitting formal parts, is as follows.

Affidavit of H. J. Duffelmeyer.

STATE OF MISSOURI,
County of Jasper, ss:

H. J. Duffelmeyer, of lawful age, being first duly sworn according to law, upon his oath deposes and says; that he resides at Woodlawn, a suburb of but not lying within the corporate limits of the City of Joplin, Jasper County, Missouri, said Woodlawn being in said Jasper County, Missouri; that this affiant is employed in Joplin, Missouri, by the Citizens State Bank of said City; that he is a consumer and user of natural gas at his residence in said Woodlawn, and has been for a period of approximately two and one-half years; that affiant purchases and secures said gas from the Kansas Natural Gas Company, same being transported to affiant's residence through pipeline laid under a public alley adjoining affiant's premises; that affiant pays the bills for gas consumed at his said residence, monthly, to the Kansas Natural Gas Company at the office of said Kansas Natural Gas Company, being room number 113 in Miners Bank Building, northwest corner of Joplin avenue and Fourth street in said city of Joplin, Jasper County, Missouri; that affiant is familiar with the said office of said Kansas Natural Gas Company; that there is painted on

the window of said office fronting the hallway in said building, the words "Kansas Natural Gas Co."; that affiant is personally acquainted with the man in charge of said office, his name being J. F. Carpenter; that said office is now and has for a long period of time, been maintained by said Kansas Natural Gas Company at said place; that said Kansas Natural Gas Company carries its name in the telephone directory of the city of Joplin; that attached hereto and made a part of this affidavit is affiant's said gas bill for natural gas consumed at his residence in Woodlawn during the month of December, 1921; that said paid gas bill is identical, excepting as to dates, amount of gas consumed and amount of bill, with the monthly bills or statements received by affiant for gas consumed at his said residence; that all of affiant's neighbors in Woodlawn purchase natural gas from said Kansas Natural Gas Company, in the same manner and under the same conditions as affiant. And further affiant saith not.

(Signed)

H. J. DUFFELMEYER.

Subscribed and sworn to before me this 24 day of May, 1922.

(Signed)

RAY BOND,

Notary Public Within and for Jasper County, Missouri.

[SEAL.]

My Commission expires Aug. 21, 1924.

Card attached to this affidavit in same form as one attached to Exhibit 12, affidavit of H. G. Packer.

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XXV.

Exhibit 15 offered in evidence is the original schedule of rates for gas filed by the Kansas Natural Gas Company by V. A. Hays, General Auditor, on November 1, 1913, with the Public Service Commission of Missouri. With respect to said exhibit being received in evidence, the following colloquy occurred:

"Mr. Higgins: That was filed prior to the decision by the Supreme Court of the United States in the case of Landon v. Caster, et al.?"

Mr. Dana: Oh, yes.

Mr. Higgins: We object to it, for the reason that it is wholly immaterial and foreign to any issue presented in this case. May I ask—are the rates fixed by this schedule, plaintiff's Exhibit 15, the rates that are now being charged by the Kansas Natural Gas Company.

Judge Lindsay: I can't say. I presume not; there's been none filed since.

Mr. Higgins: If your Honor please, the rate as fixed by this exhibit doesn't relate to the rates to Kansas City at all, I notice.

Judge Lindsay: That is immaterial.

Mr. Dana: I do not understand we are trying the Kansas City case only; it is the power of the Commission."

Said exhibit being as follows:

Rubber Stamp: Filed Nov. 1, 1913, by J. D. B., Public Service
Com. of Mo.

Form No. 14.

P. S. C. Mo. No. One, Cancelling P. S. C. Mo., No. —.

No supplement of this tariff will be issued except for the purpose
of cancelling the tariff.

Kansas Natural Gas Company.
Name of Corporation or Municipality.

*Schedule of Rates for Gas Applying to the Following Territory: All
of Jasper County Outside the Limits of Incorporated Cities and
Along Our Sixteen-inch Trunk Line Through Platte and
Buchanan Counties from the Missouri River to the City Limits
of St. Joseph.*

All of the rates shown in the attached classification are now and
have been in force for several years.

Issued Prior to April 15, 1913, Effective April 15th, 1913.
Month, Day, Year. Month, Day, Year.

By V. A. Hays, General Auditor,
Name of Officer. Title.

Independence, Kansas.
Address of Officer.

Independence, Kansas, Kansas Natural Gas Co.

Form No. 14.

Original Sheet No. 1.

P. S. C. Mo. No. One, Cancelling P. S. C. Mo. No. —.

Kansas Natural Gas Company.
Name of Issuing Corporation or Municipality.

Classification of Service.

Schedule of Rates.

Illuminating Gas:

In Alba, Neck City and Purcell, the rate is twenty-seven (27)
cents per thousand cubic feet, subject to a discount of two (2) cents
per thousand cubic feet if paid by the tenth of the month following

that in which the gas is used. In the balance of Jasper County, the rate is twenty-five (25) cents net.

Fuel Gas:

Same as Illuminating Gas. All Gas furnished for "Illuminating" and "Fuel" is measured through one meter.

Power Gas (Gas Engines):

The rate for gas engines is twenty-five (25) cents net per thousand cubic feet for the first one million (1,000,000) cubic feet consumed in any one month at one place, and fifteen (15) cents per thousand cubic feet for all above that quantity.

Power Gas (Boilers):

The rate for boiler gas is fifteen (15) cents per thousand cubic feet subject to a discount of two and one-half ($2\frac{1}{2}$) cents per thousand cubic feet if paid by the tenth of the month following that in which the gas is used. This rate only applies to gas used to make steam for power purposes and is in effect during the summer months only.

Street Lighting:

The rate for street lamps is twenty-five (25) cents per month per lamp. We estimate the consumption of a street light at one thousand (1,000) cubic feet per month.

NOTE.—All the above rates are for Natural Gas, which is the only kind we furnish.

Date of issue: Prior to April 15, 1913; date effective: April
Month, Day, Year. Month

15, 1923.

Day, Year.

Issued by V. A. Hays, General Auditor, Independence, Kansas
Name of Officer. Title. Address.

116 Here appeared three special forms of contract as follows:

Low pressure domestic contract,
High pressure domestic contract,
Manufacturer's contract,

None of which are material here.

Form No. 14.

Original Sheet No. 2.

P. S. C. Mo. No. One, Cancelling P. S. C. Mo. No. —.

Kansas Natural Gas Company.
Name of Issuing Corporation or Municipality.

Rules and Regulations Applying on Contracts for Service.

This Company has no printed rules and regulations other than those shown in the three contracts attached hereto.

Date of issue: Prior to April 15, 1913; date effective: April
Month, Day, Year. Month,
15, 1913.
Day, Year.

Issued by V. A. Hays, General Auditor, Independence, Kansas.
Name of Officer. Title. Address.

XXVI.

Exhibit 16 offered in evidence is a contract between the Kaw Gas Company and the Carl Junction Gas Company. With respect to said Exhibit 16, the following objections were made by the defendant:

"(By Mr. Garver:) Same objection—we think it is immaterial for the purposes of this suit."

Said Exhibit 16, in so far as here material, is substantially the same as the contract between The Kansas City Pipe Line Company and McGowan, Small and Morgan, set out in paragraph II hereof.

XXVII.

Exhibit 17 offered in evidence is a contract between the Kaw Gas Company and the Oronogo Gas Company dated December 1, 1905. To which the defendant objected as follows:

"(By Mr. Garver:) We make the same objection. This was set aside by the same order."

Said Exhibit 17, in so far as material here, is substantially the same as Exhibit 16 referred to in the last preceding paragraph.

XXVIII.

Exhibit 18 offered in evidence is a report, finding an order of the Public Service Commission of Missouri upon the application of the Applin Gas Company for a change in rates. To which the defendant objected on the ground that it was immaterial. Said exhibit, omitting formal parts, is as follows:

119 Before the Public Commission of the State of Missouri.

Case No. 2359.

In the Matter of the Application of THE JOPLIN GAS COMPANY for
Change in Rates.*Report.*

I.

The Joplin Gas Company engaged in supplying natural gas to its customers in the City of Joplin and adjacent territory filed an application with this commission on February 23, 1920, for permission to charge for gas service under a so-called 3-part rate. An intervening petition was filed by the City of Joplin on March 4, 1920.

Due notice, having been given, the case was heard at Joplin by two of the Commissioners on the 24th day of March, 1920. A further hearing was held at Jefferson City on the 28th day of June, 1920. At the conclusion of this hearing, the case was submitted on the evidence, proper time being given for filing briefs.

Upon receipt of a telegram from the Joplin Gas Company, under date of August 25, 1920, calling attention to the abnormally high operating expenses for April, May, June and July, and requesting a conference, a further hearing in the case was held, after due notice, at Jefferson City on August 30, 1920. Further exhibits were introduced by the Joplin Gas Company. The City of Joplin did

120 not appear at this hearing but a statement was filed on behalf of the City by Ray Bond, City Attorney. The case now comes on for decision on the record.

II.

The Joplin Gas Company owns the distribution system in the City of Joplin. It has been supplying natural gas to its customers since July, 1905. It does not produce any natural gas but ever since said date has obtained its natural gas from the Kansas Natural Gas Company, or its predecessor, until about December, 1922, when a receiver was appointed for said Natural Gas Company, and since that date it has been obtaining its supply of gas from said receiver, who is now acting as such receiver under appointment by the District Court of the United States for the Division of Kansas, First Division, the Receiver acting under the instruction and direction of said Court. Since August 25, 1919, the Gas Company has been paying to said receiver for the gas so received by it at the rate of twenty-six cents per 1,000 cu. ft. delivered to it at the border of the City of Joplin. An order has, however, been issued by said Court directing the Receiver to charge and collect, beginning March 25, 1920, at the rate of thirty-three cents per 1,000 cu. ft. of gas delivered at the city border.

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Since August 25, 1919, the Gas Company has been selling gas to its consumers in the City of Joplin and adjacent territory at the price of seventy cents per 1,000 cu. ft. or at the option of the consumer at the price of \$1.00 per month, customer's charge, 121 plus fifty cents per 1,000 cu. ft. for all gas used, all bills being subject to a penalty of ten per cent if not paid on or before the 10th day of the month in which said bills become due. Petitioner, the Gas Company, states "that while paying at the rate of twenty-six cents per 1,000 cu. ft. for gas so purchased by it and while selling gas at the rate hereinbefore stated, it has not been able to make an adequate return upon the value of its property used and useful in said business, after paying its necessary operating expenses, and that when the increased price for the gas to be purchased by it shall become effective, its returns will be still further reduced and its said charges to its customers will be still further insufficient and inadequate to afford it a fair and reasonable return upon the value of its property and its said rates will be non-compensatory and confiscatory."

Petitioner prays that it be allowed to charge for gas service according to one of the following schedule of rates:

Proposed Rates.

(a) Twelve Dollars per year per customer as a primary charge, (payable monthly).

An annual demand charge of 32¢ per cu. ft. of maximum hourly demand, (payable monthly).

A consumption charge of 35¢ per 1,000 cu. ft. for all gas delivered (payable monthly).

All of the above said charges to carry a ten per cent penalty if not paid on or before the 10th day of the month in which same become due.

(b) In case for any reason the Commission should deem the rate as provided for in (a) to be improper, unjust or unreasonable, petitioner requests that it be permitted to charge according to the 122 following schedule:

Twelve Dollars per year per customer as a primary charge.

Plus 60¢ per 1,000 cubic feet for all gas used.

The customer's charge to be paid in equal monthly installments as and when the charge for the gas itself is paid. Penalty provisions similar to those in Schedule (a) above.

(c) If for any reason the Commission should deem it improper, unjust or unreasonable, that the petitioner should be permitted to charge according to either of the Schedules (a) or (b) as above, petitioner prays that it be allowed to charge according to the following schedule:

One Dollar per 1,000 cu. ft. for all gas used (payable monthly).

Penalty provisions the same as in (a) above.

Interim Rates.

Petitioner prays that it be allowed to charge an interim rate effective March 25, 1920, and until one of the permanent rates above suggested shall be allowed, as follows:

One Dollar per month per customer as a primary charge.

Plus sixty cents per 1,000 cu. ft. for all gas delivered.

Payments to be made monthly and to carry penalty clause as in (a) above.

The intervening petition of the City of Joplin sets forth:

(1) That it is the duty of the Commission and within its jurisdiction to determine whether or not a wholesale rate for gas, all conditions and circumstances considered, is reasonable, and what part of said rates may be considered as a proper operating expense.

(a) That the 3-part rate as proposed by the applicant is an unjust, unfair and discriminatory rate regardless of the charges fixed for the three parts thereof; that the establishment of said method of charging for natural gas, especially to domestic consumers, will result in unjust and unlawful discrimination in favor of large consumers and against small consumers of gas; and that said method of charging for natural gas will result in impaired service and great inconvenience to the average consumer of gas.

(3) That the proposed charges will produce revenue in excess of what is necessary to yield applicant a fair return on its invested capital.

(4) That under the rates at present charged by applicant for natural gas in the City of Joplin said applicant is receiving more than a fair return on its invested capital; that said rates will in the future continue to yield a fair return and that the rates should be reduced instead of being increased.

(5) That the present rates which were by this Commission allowed to become effective as temporary and emergency rates should not be increased without a complete investigation into the value of applicant's property, used and useful, in supplying gas; into the income, expenses and business methods of said applicant, and into the reasonableness of the charges for gas to the distributing companies in Missouri by the Kansas Natural Gas Company.

(6) That the interim rates requested by applicant as well
124 as the rates suggested as alternatives for the 3-part rate are unjustly high and unfair and would yield an excessive return on the investment.

Wherefore, the City of Joplin prays that the Commission through its engineering and accounting experts have a complete inventory and appraisal made of the property of the applicant, and cause its books and records to be audited and examined, and its operating revenues and expenses to be determined, and that the Commission enter into a complete and thorough investigation of the whole question.

In the statement filed on behalf of the City of Joplin on August 30, 1920, objection is made to the filing of an increased interim rate on one day's notice as requested by the applicant. Reference is made to the fact that the earnings for the previous four months, although the company failed to meet its operating expenses, would not be convincing proof that the operation of the plant was not a profitable venture. It is further pointed out that although in September, 1919, the applicant failed to meet its operating expenses by the amount of \$1,740.57 and had a meagre income during the following July and August, nevertheless the amount available for return on investment and depreciation during the whole year, 1919, amounted to \$91,780.39. Renewed objection is made to the 3-part rate and it is suggested that if the customer's charge is allowed it should not exceed fifty cents per month, that being the charge allowed by this Commission in the Kansas City Gas case.

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Investment.

The Gas Company presents in Applicant's Exhibit No. 1 an inventory and appraisal of its property summarized as follows:

NOTE. Here follows summary of the physical property, totalling \$1,114,626.53.

It developed at the hearing that Items No. 4 "Coal Gas Apparatus" and No. 5, "Holder," amounting to \$42,531.50, represented property not used and useful at present. Prices for Items 2 to 6, inclusive, amounting to \$56,147.51 represent original cost depreciated. Prices for Items Nos. 7 to 11, inclusive, amounting to \$823,785.00, represent reproduction cost as of March 1, 1920, undepreciated.

According to the summary above, the total value, exclusive of going value, as claimed by the Gas Company is \$1,114,626.53.

In the brief filed by the applicant, it is suggested that a valuation of the property of the Joplin Gas Company on the basis of \$21,000 per mile of mains, which was the basis applied by this Commission as a check on reproduction cost in the Kansas City Gas Company's case, decided by this Commission on February 12, 1920, would result in a value of \$2,830,830 if applied to the equivalent 3-inch mileage or \$2,058,000 if applied to the actual mileage. The Company has 134.8 miles of equivalent 3-inch, and ninety-eight miles of actual mains.

126 The Joplin Gas Company has capital stock and funded and non-negotiable debt as follows:

Capital Stock, common	\$300,000.00
Funded Debt	300,000.00
Non-negotiable debt	326,154.56
According to the "Comparative General Balance Sheet"	
of Dec. 31, 1919, the fixed capital amounts to.....	962,156.87
Total assets and liability amount to.....	\$1,053,617.68

In the appraisal submitted by the Company the value of more than ninety per cent of the property is based upon reproduction cost

new as of March 1, 1920. Assuming that these values are fifty per cent in excess of the actual investment, we submit herewith a tentative and approximate valuation of the property based on the evidence, as follows:

NOTE. Here follows items making up value of physical property reduced as above, showing a total value of physical property aggregating \$793,000.00. Going value, \$80,000.00. Total value tangible property and going property amounting to \$873,000.00.

The Commission is unable to fix a definite value for rate-making purposes at this time, as no investigation has been possible by the engineers and accountants of the Commission, but taking into account all of the evidence available in this case, we will assume a tentative value of \$750,000 as the fair value of the property for rate-making purposes.

Revenues and Expenses.

127 According to Applicant's Exhibit No. 2, the revenues and expenses for the three years, 1917, 1918, and 1919, were as follows:

NOTE.—Tabulation shows for the year 1917:

Revenue	\$292,899.61
Expenses	229,415.82
Net Revenue	63,483.79
Non-operating income	1,967.73
Amount available for return on investment and depreciation reserve	65,451.52

Tabulation shows for the year 1918:

Revenue	\$224,018.50
Expenses	166,472.03
Net Revenue	57,546.47
Non-operating income	1,359.04
Amount available for return on investment and depreciation reserve	58,905.51

Tabulation shows for the year 1919:

Revenue	\$295,047.70
Expenses	205,117.14
Net Revenue	89,930.56
Non-operating income	1,849.83
Amount available for return on investment and depreciation reserve	91,780.39

(d) As estimated, for 12 months beginning April, 1920, with present rates:

According to Applicant's exhibit termed "Smith's Exhibit, No. 2", the revenue and expenses for twelve months beginning April, 1920, when the Gas Company commenced paying 33¢ per 1,000 cu. ft. of gas, are estimated as follows:

Revenue for 12 mos. after paying for gas at the rate of 33¢ per 1,000.....	\$62,933.12
Operating expenses assumed same as for year, 1919..	60,816.00

Estimated amount available for return on investment & depreciation reserve for 12 mos. with rates in effect at present.....	\$2,117.12
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128 (e) As estimated for 12 mos. with 3-part rate as proposed:

Revenue.

Service charge, 5,600 consumers @ 12.00 per year...	\$67,200.00
Demand charge, 5,600 consumers with average of 50 cu. ft. hourly demand @ 32.00 per 100 cu. ft. hourly demand, or 5,600 times 16.00.....	89,600.00
448,000 M cu. ft. gas sold @ 35¢.....	156,800.00
Total Revenue	\$313,600.00

Expenses.

Kansas Natural Gas Co.

80% of demand charge.....	\$71,680.00
448,000 M cu. ft. gas @ 22¢.....	98,560.00
	\$170,240.00

Leakage, above amount allowed:

Total Leakage for 1919.....	278,000 M cu. ft.
Leakage allowed	28,254 " " "
	249,740

249,746 M. Cu. Ft. @ 22¢.	54,944.00
Operating expenses as in 1919.....	60,816.00
	\$286,000.00

Estimated revenue	\$313,600.00
Estimated expenses	286,000.00

Am't Available for return on investment & depreciation reserve	\$27,600.00
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(f) As estimated, for 12 months, with \$12.00 per year customer's charge and 60¢ per M cu. ft. of gas:

Revenue.

Service charge, same as under (e) above.....	\$67,200.00
336,000 M cu. ft. of gas sold @ 60¢.....	201,600.00
Total revenue	<u>\$268,800.00</u>

Expenses.

568,000 M cu. ft. gas purchased at city gates @ 33¢	\$187,440.00
Operating expenses as in '19.....	60,816.00
	<u>\$246,256.00</u>

129 Amt. available for return on investment & depreciation reserve	\$20,544.00
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(g) As estimated, for 12 months with rate of \$1.00 per 1,000 cu. ft. gas for all gas sold:

5,600 consumers @ \$43.00 average.....	\$240,800.00
Cost of gas at 33¢ per 1,000 plus operating expenses..	<u>211,964.00</u>

Amt. available for return on investment & depreciation reserve	\$28,836.00
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We note from the above that for the last three years the Joplin Gas Company with an assumed tentative investment of \$750,000 had the following amounts available for return on investment and depreciation reserve:

Year, 1917	\$65,451.00 or 8.7%
Year, 1918	58,905.00 or 7.9%
Year, 1919	91,780.00 or 12.2%

and that the annual estimated amounts available in the future, under various assumptions are as follows:

With present rates in effect.....	\$2,117.00 or 0.3%
With proposed 3-part rate.....	27,600.00 or 3.7%
With proposed interim rate.....	20,544.00 or 2.7%
With proposed \$1.00 rate.....	28,836.00 or 3.8%

Under the 3-part rate, however, if the leakage can be brought down to normal the Joplin Gas Company will save \$54,944, giving it \$82,544 per year, or 11% available for return on investment and depreciation reserve in place of \$27,600 as above.

3-Part Rate.

The so-called 3-part rate represents an effort to assess charges for gas service so that each customer shall pay an amount directly proportional to the investment required for his particular service plus

his proportional amount of the operating expenses based on the quantity of gas used.

130 The first part of the rate, for which the gas company desires \$1.00 per month, represents the cost of reading meter, billing, collecting, bookkeeping and such expenses as are alike for each consumer, independent of his demand or consumption.

The second part, or the demand charge, for which the gas company desires 32¢ per — cu. ft. of maximum hourly demand, represents the return on the investment required, plus the depreciation reserve, plus taxes, divided by the total maximum demand.

The third part, for which the gas company desires 35¢ per 1,000 cu. ft. of gas sold, represents the amount of the operating expenses, including all labor and material divided by the total amount of gas sold.

This is a very similar form of rate to the rate which has for many years past been in effect for the sale of electric current, where a customer's charge and a primary demand charge are almost universally adopted, generally in a combined form, at least by the larger utilities. Water companies likewise have a demand charge based upon the size of meter required.

The City of Joplin offered fourteen affidavits of citizens of Ottawa, reciting their opinions of the 3-part rate which had been in effect in that city for a period of about three months. Dissatisfaction was expressed both with the service and with the cost under the 3-part rate.

Witness Hamilton for the gas company pointed out that the affidavits presented by the City of Joplin were made by parties who are using large amounts of gas for short periods, but had a small average consumption, and were, therefore, securing an unduly preferential rate under the flat rate plan, and further submitted

131 eleven exhibits representing eight working men, two retired farmers and one business man, which indicated that they were in favor of the 3-part rate, and were satisfied with the service.

Conclusion.

From a consideration of all of the evidence submitted in this case, the Commission concludes as follows:

1. That the Commission will not at this time pass upon the question of adopting the three-part rate but will await information as to the results attained in Ottawa, Kansas, and the towns supplied by the Wichita Natural Gas Company where the three-part rate is in effect.

2. That unless an increase in rates is allowed, the estimated amount available for return on the investment and depreciation reserve for the Joplin Gas Company for twelve months is \$2,117.00 or 0.3% on an investment tentatively assumed to be \$750,000.

3. That the Joplin Gas Company is entitled to relief and shall be permitted to file a schedule of maximum rates and charges effective October 1, 1920, pending the decision of the Commission as to the installation of the three-part rate, as follows:

Rates Allowed.

Service charge, 50¢ per month per customer, plus 70¢ per 1,000 cu. ft. for all gas used. Payments monthly, with ten per cent penalty clause as requested.

132 While it is impossible to predict, with accuracy, the net return which the gas company will receive from the rate as allowed above, it is believed that it will not exceed nine per cent for return and depreciation on an investment of \$750,000 even after the leakage of gas has been reduced to what might reasonably be considered allowable.

4. That the Joplin Gas Company shall proceed with all due diligence to repair and rebuild its distribution system and service connections so far as may be necessary to prevent an undue amount of leakage or a greater loss of gas than is normally allowable in property maintained — distribution systems.

5. That the Joplin Gas Company shall be required to file quarterly reports setting forth the income, operating expenses and return available, and that the Commission shall retain full jurisdiction of the matters and things herein involved for the purpose of issuing such further orders as may at any time to it appear desirable, upon the evidence then available.

An order will issue in conformity with the above.

EDWARD FLAD,
Commissioner.

All concur, except Simpson, C., absent.

133 Following is a copy of the order of the Public Service Commission of the State of Missouri, issued on the 23rd day of September, 1920:

Order.

It appearing that on February 23, 1920, the Joplin Gas Company made application to this Commission for permission to increase its rates and charges for Gas Service at Joplin, Missouri, and a hearing having been held and the case having been submitted and full investigation of the matters and things involved having been made, and the Commission on the date hereof having made and filed its report containing its findings of facts and conclusions thereon, which said report is hereby referred to and made a part hereof,

It is, after due deliberation

Ordered: 1. That the Joplin Gas Company be and is hereby denied the rates and charges requested in its application filed February 23, 1920.

Ordered: 2. That the Joplin Gas Company be and is hereby permitted to put into effect October 1, 1920, pending the decision of

the Commission as to the installation of the three-part rate, the following schedule of maximum rates and charges:

Service charge, 50¢ per month per customer.

For all gas consumed per 1,000 cu. ft. 70¢

Payments monthly, with ten per cent penalty clause.

134 Ordered: 3. That the said Joplin Gas Company shall be required to file quarterly reports setting forth the income, operating expenses and return available and that the Commission retain full jurisdiction of the matters and things involved for the purpose of issuing such further orders as may at any time to it appear desirable, upon the evidence then available.

Ordered: 4. That the said company shall proceed with all due diligence to repair and rebuild its distribution system and service connections so far as may be necessary to prevent any undue amount of leakage or a greater loss of gas than is normally allowable in properly maintained distribution systems.

Ordered: 5. That this order shall take effect on October 1, 1920, and that the Secretary of the Commission shall forthwith serve upon the parties hereto a certified copy of this order, and that the said Company shall on or before the effective date of this order notify the Commission in the manner prescribed in Section 25 of the Public Service Commission Law, whether the terms of this order are accepted and will be obeyed.

By the Commission,
[SEAL.]

N. E. WILLIAMS,
Secretary.

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XXIX.

Exhibit 19 offered in evidence, omitting formal parts, is as follows:

Affidavit of L. H. Breuer.

L. H. Breuer, being first duly sworn, upon his oath states that he is the duly appointed, qualified and acting Secretary of the Public Service Commission of the State of Missouri, and as such the custodian of the records and files of said Public Service Commission and has knowledge of the proceedings had and orders made by said Public Service Commission, and affiant under his oath further states that no application has been filed or made by the Kansas Natural Gas Company or by anyone in its behalf to said Public Service Commission of the State of Missouri, for any order of said Commission authorizing or allowing said Kansas Natural Gas Company to increase the rates heretofore charged by it, for natural gas supplied to local distributing companies selling natural gas to consumers in cities and towns in the State of Missouri, and no evidence has been offered to the Public Service Commission of the State of Missouri by the Kansas Natural Gas Company, or by any other company or person, to inform or advise said Public Service

Commission as to the reasonableness or necessity of the claim or demand of said Kansas Natural Gas Company for an increase in the rate and price to be charged by it for natural gas furnished to local companies, selling and distributing natural gas in certain cities and towns in the State of Missouri, and particularly in the cities of Kansas City, Joplin, Oronogo and Carl Junction in the State of Missouri and said Public Service Commission of the State of Missouri has not been informed and is not advised, as to the reasonableness of or necessity for an increase in the price and rate to be charged by said Kansas Natural Gas Company, for natural gas supplied to local companies operating within cities of the State of Missouri.

(Signed)

L. H. BREUER.

The foregoing statement was sworn to and subscribed by the said L. H. Breuer, who is personally known to the undersigned, at my office in Jefferson City, in the County of Cole and State of Missouri, on this 16th day of May, 1922.

Witness my hand and official seal.

My term expires Jan. 15, 1925.

[SEAL.]

(Signed) CARL TRAUERNICHT,
Notary Public in and for Cole County, Missouri.

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XXX.

The foregoing was all of the evidence introduced by the complainants and intervenor in support of the bill of complaint and the intervening bill of complaint of the Kansas City Gas Company. Thereupon, complainants and intervenor rested and the defendant Kansas Natural Gas Company announced to the court that it had no evidence to introduce, whereupon the taking of evidence was concluded.

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Certificate.

We, the undersigned solicitors for the appellants, do hereby certify that the above and foregoing is a full, true and complete statement of the evidence in the above entitled cause and contains all parts essential to the decision of the questions presented by the appeal herein, and is made under the terms and requirements of Equity Rule 75, for the purpose of perfecting the record on appeal.

Wherefore the premises considered, appellants move the court to approve the foregoing statement of the evidence.

JESSE W. BARRETT,

Attorney-General of Missouri.

L. H. BREUER,

JAMES D. LINDSAY,

Solicitors for Public Service

Commission of Missouri.

J. W. DANA,

Solicitor for Kansas City Gas Company.

Order.

The foregoing statement of the evidence is hereby approved this 14th day of November, 1922.

ARBA S. VAN VALKENBURGH,

Judge.

138 In the District Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 361.

STATE OF MISSOURI, on the Relation of JESSE W. BARRETT, Attorney-General of the State of Missouri, and Public Service Commission of the State of Missouri, Complainants,

vs.

KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

In Equity. Suit by State of Missouri on Relation of Attorney General and Public Service Commission against Kansas Natural Gas Company. The Kansas City Gas Company, intervener. Decree for defendant.

Jesse W. Barrett, Attorney-General of Missouri, and R. Perry Spencer, General Counsel, and James D. Lindsay, Assistant General-Counsel of the Public Service Commission, all of Jefferson City, Missouri, for the complainant.

H. O. Caster and R. D. Garver, both of Bartlesville, Oklahoma, and Richard J. Higgins, of Kansas City, Missouri, for the defendant.

J. W. Dana, of Kansas City, Missouri, for the intervener, the Kansas City Gas Company.

VAN VALKENBURGH, *District Judge* (orally):

Complainant, the State of Missouri, on the relation of the Attorney General of the State, and the Public Service Commission of the State, filed a bill of complaint against the Kansas Natural Gas Company praying a permanent injunction against said company, to restrain it from increasing the price of gas sold by it to local distributing companies in the state, to the extent of five cents per thousand cubic feet, over the rates heretofore in effect, without first procuring the consent and approval of the Public Service Commission. Such increase of five cents per thousand cubic feet, the Kansas Natural Gas Company has informed the distributing companies, would be effective after the so-called April Meter Readings of 1922. The Kansas Natural Gas Company also advised the distributing companies that unless they complied with the rates announced and fixed by them, they would discontinue supplying gas

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to the distributing companies. The Kansas City Gas Company, which purchases gas from the Kansas Natural and distributes such gas so purchased at Kansas City, filed its intervening petition herein and asked, among other things, the same relief as that prayed by complainant.

The defendant filed answers to the bill of complaint and the intervening bill, in which answers it asserts that it is engaged in the transportation of gas from the state of Oklahoma into and through the state of Kansas and into the state of Missouri; that such gas is sold by it in Kansas and Missouri, and that, therefore, its business is interstate commerce, and as such, is free from the regulation herein sought to be imposed. The three parties, complainant, intervener and defendant, have executed and filed an agreed statement of facts, which is supplemented by evidence of a documentary nature, introduced by complainant and intervener. The facts thus established in so far as they may be necessary to a decision of the points in controversy, are hereinafter sufficiently disclosed. Upon the record thus made, the cause is presented for final hearing upon the application for permanent injunction against the Kansas Natural Gas Company from

140 raising its rate five cents per thousand cubic feet at the gates of the cities, on the ground that the company has submitted itself, either directly or impliedly to the jurisdiction of the Public Service Commission, and that it has no right to raise that rate without first applying to the Commission, and then only subject to its orders with a right to review the commission's findings, on the ground that the same are confiscatory and unreasonable.

The whole question has been submitted to the court upon one proposition, i. e. the power of the Commission respecting this application.

The cases chiefly relied upon are the Landon case and the so-called Pennsylvania case, in the 249 U. S., at page 236, and 252 U. S., at page 23. The Landon case concerned itself entirely with the question of whether the right existed in the receivers of the Kansas Natural Gas Company to enjoin the utilities commissions and the municipalities from interfering with a raise of rates by a local distributing company; that was the real issue in that case. The Supreme Court had occasion to advert to some other principles involved, and the case becomes important, principally from that standpoint. The court said that the transportation and sale of gas through pipe-lines from one state to another is inter-state commerce, and that as a part of such commerce, the receivers might sell and deliver gas so transported to local distributing companies, "free from unreasonable interference by the state;" they were under no compulsion to accept an unremunerative price.

It has been stated and shown with respect to those conditional contracts, that conditions have been so materially changed that it is at least a matter of doubt, if not conclusively established, that those contracts as such are no longer binding as to the terms

141 imposed by them.

Some question is raised here as to what is meant by the expression "free from unreasonable interference by the state."

In the Pennsylvania Gas case, the court had to do with the gas company as a distributing agent. There, gas was distributed directly to the consumers in different cities and localities therein mentioned, by the pipe-line company, and the court held that when that was the situation the company came under the regulating power of the state, because what was done was a local intrastate business, and not interstate commerce, to which reference had been made in the Landon case; and they had occasion to differentiate the Landon case from the Pennsylvania case, which was then before the court; and it is not without significance that in deciding a question which came clearly within the local power, control and regulation of the state, it should have been thought necessary by the Supreme Court to point out the difference existing between the different classes of commerce, interstate as against intrastate.

The court says:

"We think that the transmission and sale of natural gas produced in one state, transported by means of pipe-lines and directly furnished to consumers in another state, is interstate commerce within the principles of the cases already determined by this court."

142 So we are left with no doubt as to the fact that this conclusively establishes that the transportation of natural gas from one state to another is interstate commerce, and that far we have no difficulty in reaching a final conclusion.

The court further said:

"The general principle is well established, and often asserted, that the state may not directly regulate or burden interstate commerce. That subject, so far as legislative regulation is concerned, has been committed by the Constitution to the control of the Federal Congress. But while admitting this general principle, it, like others of a general nature, is subject to qualifications not inconsistent with the general rule, which now are as well established as the principle itself. * * * In varying forms, this subject has frequently been before this court. The previous cases were fully reviewed and deductions made therefrom in the Minnesota Rate Cases, 230 U. S. 352."

Now, it is significant that the court places the application of this principle upon the same basis as in the case of railroad regulation and transportation; so that we may have some light thrown upon the question by referring to the principles applicable to such cases. The Minnesota Rate Cases, of course, very exhaustively clear up the entire subject, and it is unnecessary to go to any other decided cases, in order to learn what the principles involved are, and to learn where the line of demarcation falls.

After stating the limitations, it was said in the Minnesota Rate Cases (Page 402):

143 "But within these limitations there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction

although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the Government because of the necessity that they should not remain unregulated and that their regulation should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction, but rather that the States should continue to supply the needed rules until Congress should decide to supersede them. Further, it is competent for a State to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidentally or indirectly be involved. Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our Constitutional system has thus been made possible."

144 Now, in the Pennsylvania Gas Case, 252 U. S., at page 30-31 the court said.

"The rates of gas companies transmitting gas in interstate commerce are not only not regulated by Congress, but the Interstate Commerce Commission Act expressly withholds the subjects from Federal control.

"The thing which the State Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the city of Jamestown in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the State, nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is

conducted to factories and residences as it is required for use. The service is similar to that of a local plant furnishing gas to consumers in the city.

"This local service is not of that character which requires general and uniform regulation of rates by Congressional action, and which has always been held beyond the power of the States, although Congress has not legislated upon the subject.

Now, we shall have occasion, from the cases cited in the Pennsylvania case, to see to what extent it lies within the power of a state directly to affect, regulate or burden interstate commerce—and by "burden" is meant anything that imposes either a restrictive or an onerous load upon the commerce,—so any taxation is a burden, although the states have the right to tax, still a direct tax on interstate commerce is not permitted, at all, because it is a direct burden. It may not be a prohibitive or exclusive burden, but it is a burden, and to that extent it falls without the power of the state. It becomes important to consider the exact meaning of this phrase,

145 in differentiating the cases which arise in which interstate commerce is to some extent involved,—the cases where the right to burden or affect is denied, and those in which the power of the state is sustained because of local interest, and where Congress had not entered the field. In a case like this, if Congress undertook to regulate the rates for the transportation and sale of gas transported in interstate commerce, as an incident to that it would have a right, undoubtedly, to regulate the intrastate business which was so interwoven with the interstate commerce as to make it a part of it. That is shown by the Minnesota Rate Cases. It was said there that the states had always regulated rates in the states, where it was purely a matter of intrastate commerce, and, while the Government had exercised control over all interstate rates, that it had never entered the field or sought by any regulation or administrative policy to take away from the states the right to control commerce that was purely intrastate; but in the Minnesota Rate Cases, Justice Hughes said that clearly Congress had the right to do that if it signified its intention,—it had the power to do it, and since then that principle has been fully recognized.

In the case of *Schollenberger v. Pennsylvania*, 171 U. S., 1, on page 13, this is said:

"To the same effect, we think, is the case of *Railroad Company v. Huson*, 95 U. S. 465, 469, in which it was said that 'Whatever may be the power of a state over commerce that is completely internal, it can no more prohibit and regulate that which is interstate, than it can that which is with foreign nations'. The court, therefore, while conceding the right of the state to enact reasonable inspection laws to prevent the importation of diseased cattle, 146 held the laws of Missouri there under consideration to be invalid, because it prohibited absolutely the introduction of Texas cattle during the time named in the Act, even though they were perfectly healthy and sound.

"The court said that a state could not under the cover of exercising its police powers substantially prohibit or burden either foreign or interstate commerce. Reasonable and appropriate laws for the inspection of articles, including food products, were admitted to be valid, but absolute prohibition of an unadulterated, healthy and pure article has never been permitted as a remedy against the importation of that which was adulterated and therefore unhealthy or impure."

I am quoting, because of certain principles that have been laid down, and because I prefer to state them in the language of the Supreme Court, and as indicating what is meant by the cited cases that are applicable to the case before us.

In *Brown v. Maryland*, 12 Wheat., 419, l. c., 423, the court said:

"If Maryland has a right to enact laws of this description, she has a right to regulate her own foreign commerce, although, by the constitution, it is exclusively vested in Congress. The imposition of import duties is often resorted to, not for the purpose of revenue, but to regulate commercial intercourse with foreign countries. Discriminating duties, protective duties, prohibitory duties, are so many commercial regulations. These may all be resorted to under the guise of license laws. If Maryland has a right to pass general license laws, she may pass partial ones; she may select particular commodities and burden their sale with a license duty; she may establish a tariff discriminating duties for himself and affect, if not defeat, the commercial policy of the country.

147 In *Heyman v. Hays*, 236 U. S., 178, the court says:

"The right to engage in interstate commerce is not the gift of a state; it cannot be regulated or restrained by a state, nor can a state exclude from its limits a corporation engaged in such commerce."

And the court, in the same case, cited *West v. Kansas Natural Gas Company*, 221 U. S., 229, l. c. 260, wherein it was observed:

"At this late date, it is not necessary to cite cases to show that the right to engage in interstate commerce is not the gift of a state, and that it cannot be regulated or restrained by a state, or that a state cannot exclude from its limits a corporation engaged in such commerce."

Now, the *Minnesota Rate Cases*, again, have some particular phrases in them that require special notice in this connection. I refer to *Minnesota Rate Cases*, Volume 230, page 252, in which it is said:

"Even without action by Congress, the commerce clause of the Constitution necessarily excludes the states from direct control of subjects embraced within the clause which are of such a nature that, if regulated at all, their regulation should be prescribed by single

authority. There is thus secured the essential immunity of interstate intercourse from the imposition by the states of direct burdens and restraints."

The court, in the same case, further said, l. c. 396:

"If a state enactment imposes a direct burden upon interstate commerce, it must fall regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which in the absence of federal regulation should be free. If the Acts of Minnesota constitute a direct burden upon interstate commerce, they would be invalid without regard to the exercise of federal authority touching the interstate rates said to be affected. On the other hand, if the state in
148 the absence of federal legislation would have the power to prescribe the rates here assailed, the question remains whether its action is void as being repugnant to the statute which Congress has enacted."

In the same opinion, the court further said, l. c. 399:

"The grant in the Constitution of its own force—that is, without action by Congress, established the essential immunity of interstate commercial intercourse from direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that as to those subjects which require a general system of uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment, according to the special requirements of local conditions, states may act within their respective jurisdictions until Congress sees fit to act; and when Congress does act, the exercise of its authority overrides all conflicting legislation.

"The principle which determines this classification, underlies the doctrine that the states cannot, under any guise, impose direct burdens upon interstate commerce."

In the case of *Wabash v. Illinois*, 118 U. S., 557, l. c. 571, the Supreme Court holds: that interstate commerce which is national in its character is subject to regulation by Congress exclusively. The court, in its opinion, said:

"The line which separates the power of the states from this exclusive power of Congress is not always distinctly marked, and often times it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances, it would be a useless task to undertake to fix an arbitrary rule by which the line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the par-

ticular rights involved; but we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom does en-

149 croach upon the exclusive power of Congress. * * *

The River Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers, and regulate the transportation of its own freight, regardless of the interest of others. Nay, more—it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries, he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. * * *

“And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states which was deemed essential to a more perfect union by the framers of the Constitution, if at every stage of the transportation of goods and chattels through the country, the state within whose limits a part of this transportation must be done, could impose regulations concerning the price, compensation or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce.”

Those remarks are thought pertinent in the case at bar. This gas originates in Oklahoma, passes through Kansas and comes into Missouri; and, of course, if the principle contended for by complainant is indulged, there might be, could be, and probably would be such regulation in these various states as in a very prohibitive degree to burden, restrict and embarrass the commerce of this Nation.

Now, having it clearly disclosed that this is interstate commerce—and from all that has been said here, and from reading back the reports and decisions upon which the conclusion was based that there can be no direct regulation or burden of strictly interstate commerce by the states, it would seem to be beyond question that the state,

150 here, and its Public Service Commission, has no authority to regulate the rate to be charged for such commerce by the defendant company. Of course, it is contended that the company has so far subjected itself, by bringing its product into the state, and by doing so through mains and certain instrumentalities that have been established and built for that purpose, that it has voluntarily submitted itself to the jurisdiction of the state, and that, notwithstanding the fact that this is interstate commerce, it is still subject to state regulation.

I cannot indulge the contention that by the contract—by the supply contract—which was made between the Kansas City Gas Company and the Kansas Natural Gas Company that the Kansas Natural

Gas Company necessarily or impliedly became a party to the franchise, and, therefore, subject to the control of the State. It never has been my opinion that that was the effect of that contract. It was simply that the Kansas City Gas Company, when that franchise was granted, was required by the city to disclose the source of its supply, so that the city would be apprised where it could get the gas, and upon what terms it could get it; but there never has been any contractual relation between the Kansas Natural Gas Company and Kansas City, and there never has been anything involved in the franchise which imposes a necessary duty upon the Kansas Natural, of which the city could avail itself directly, but simply it was known that the gas was to be procured from the Kansas Natural and its predecessors, and, necessarily, the city recognized that the company

151 had to have some way to make the connections, whereby that supply could be effective; and in the Pennsylvania case, by means of transportation through the State and into the State, that feature was far more pronounced than in this case; yet, there was no disposition by the Supreme Court in that case to recognize that for that reason the Gas Company had placed itself within the jurisdiction of the State authorities.

Now, it is very probable, of course, that this is a commodity that should, in some way, be regulated. As the Supreme Court has said, that is a matter confided to the Federal Congress. There is no doubt that these gas companies, furnishing gas throughout the United States, should have some body that may exercise control over them; but I am compelled to stand for what I believe the law has been disclosed to be, that the power of direct regulation of interstate commerce, whether Congress has entered the field or not, cannot be and is not lodged in the state. The fact that indirectly at the end of this interstate commerce local interests are affected is not decisive of the question. It is necessary that this company, itself, must have intervened in local affairs, as an instrumentality taking part in the distribution and operation of the affairs connected with that commerce, before local jurisdiction can be conferred.

This answers the question of "reasonableness" which has been raised; and we are compelled to come to the conclusion that under the rules announced by the court, any direct burden or regulation upon commerce which is distinctly interstate is unreasonable.

152 Judge Pollock, in the District of Kansas, in the case of Central Trust Company v. Consumers Light, Heat and Power Company, in which was involved the right of the Kansas Natural Gas Company to increase its rates in Kansas without the consent of the Public Utilities Commission of that State, came to the same conclusion as that announced in this opinion.

I am compelled to conclude, therefore, that the injunction prayed must be denied.

153 UNITED STATES OF AMERICA, *set*:

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a full, true and complete tran-

script of the record, assignment of errors, and all proceedings in the case wherein State of Missouri, on the relation of Jesse W. Barrett, Attorney General of the State of Missouri, and the Public Service Commission of the State of Missouri, and the Kansas City Gas Company, are Complainants, and The Kansas Natural Gas Company is defendant, as fully as the same appears on file and of record in my office, in accordance with præcipe filed herein and made a part hereof.

I further certify that the original Citation is prefixed hereto and returned herewith.

Witness my hand as Clerk, and the seal of said Court. Done at office in Kansas City, Missouri, this 16th day of November, A. D. 1922.

[Seal of the United States District Court, Western Division,
Western District, of Missouri.]

EDWIN R. DURHAM,
Clerk U. S. District Court,
By H. C. SPAULDING,
Deputy Clerk.

Endorsed on cover: File No. 29,253. W. Missouri D. C. U. S. Term No. 703. State of Missouri on the relation of Jesse W. Barrett, attorney general; Public Service Commission of Missouri and Kansas City Gas Company, appellants, vs. Kansas Natural Gas Company. Filed November 20th, 1922. File No. 29,253.